

Kelly, George, 45d.  
A N

HISTORICAL NARRATIVE  
OF THE  
TRYALS

O F

Mr. George Kelly,

AND OF

Dr. Francis Atterbury;

(Late) Lord Bishop of

Rochester, &c. &c.

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L O N D O N :

Printed for Mr. Tho. Warner, at the Black Boy in  
Pater-Noster-Row; and Mr. A. Rocayrol in Green-  
street near Leicester-Fields. M DCCXXVII.

Price One Shilling.

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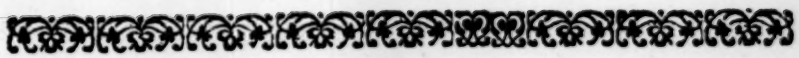
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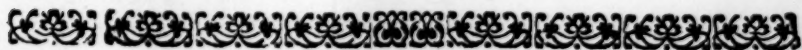
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## *Advertisement.*

**T**HE following *Historical Narrative* of the *Tryals* of Mr. George Kelly, and of the late Bishop of Rochester, was inserted *Verbatim* in the **POLITICAL STATE** of Great Britain for the Month of *June 1723*; for which there has been such a Demand, that the *Author* has been obliged to cause it to be *reprinted*, in order to compleat his Sets: And, to oblige such Persons as call'd for that *Month*, merely on account of those *Tryals*, he has caused a few *Copies* of them to be printed Single.



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THE UNIVERSITY OF CHICAGO



A N  
HISTORICAL NARRATIVE  
O F T H E  
T R Y A L S  
O F  
Mr. G E O R G E K E L L Y  
A N D  
Dr. *Francis Atterbury, &c.*



ON Tuesday, the 30th of April, Mr. George Kelly was brought from the Tower to the Bar of the Lords House, in order to make his Defence against the Bill to inflict Pains and Penalties upon him, with the Assistance of the Council who had been assign'd him, to wit, Sir Constantine Phips and Councillor Pratt. After the 2d. Reading of

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of the *Bill*, Mr. *Reeves* and Mr. *Werge* were heard to it, who open'd the Nature of the Evidence they had to produce, to prove the Conspiracy in general, and the Prisoner's Part in it, in particular. Mr. *Kelly's* Council raised several Objections to both, and in a special manner, strenuously opposed the Reading *Neynoe's* Examination, urging, that as it was neither taken upon Oath, nor signed by him, it ought not to be admitted as Evidence: But as this Objection had already been in *Plunket's*, so was it easily over-ruled in the present Case. Hereupon, several Informations of *Philip Neynoe* were read, importing, in Substance, ' That *George Kelly*, who  
 ' often went by the Name of *Johnson*, frequently  
 ' told him, that the Bishop of *Rocheſter* held Cor-  
 ' respondencies with the Pretender and his Agents,  
 ' That he (*Kelly*) was employ'd by the Bishop in  
 ' writing for him, and carrying on the ſaid Corref-  
 ' pondencies; That the Pretender relied more on Ad-  
 ' vices from the Bishop, than from any other Perſon;  
 ' that the Bishop went ſometimes by the Name of  
 ' *Jones*, ſometimes by that of *Illington*, that he had  
 ' ſeen ſeveral Cyphers in *Kelly's* Hands, one in  
 ' Figures, another of fictitious Names, for carrying  
 ' on the Correſpondence with the Pretender's  
 ' Agents. That the Informant, (*Neynoe*) had been  
 ' employ'd to draw up Three ſeveral Memorials  
 ' to the Regent of *France*, to ſolicit him to ſend  
 ' Forces to the Aſſiſtance of the Conſpirators;  
 ' the laſt of which was in *December* 1721, and  
 ' contain'd a Demand of five Thouſand Men, to be  
 ' ſent to invade theſe Kingdoms; and that the  
 ' Heads of theſe Memorials were given him by  
 ' *Kelly*, and one who went by the Name of *Watſon*,  
 ' whom he took to be the (late) Earl *Marifchal*.  
 ' That in *March* laſt, *Kelly* brought him (*Neynoe*)

the

' the Heads of a Letter, to be drawn up with a design of its being intercepted by the Government, in order to amuse them into a false Security ; That he drew the said Letter in a Paper writ Column ways, and that it was brought back to him, corrected, as he believ'd, by the Bishop of *Rocheſter*. That *Neynoe* farther added, That *Kelly* assured him, the Bishop got Notice of his being to be taken up, ſome Days before it happen'd, and that this Notice was given the Bishop by one of the Lords of the Council.'

The Council for the Bill urged, That they had Evidence to produce to prove, That *Neynoe* was intimately acquainted with *Kelly*, and thereby had an Opportunity of being inform'd by him, That the Bishop of *Rocheſter* was alſo acquainted with *Kelly*, invited him to dine with him, and ſent to inquire after his Health ; And that the ſeveral Particulars contain'd in *Neynoe*'s Informations, were corroborated and ſupported, in every material Circumſtance, by ſeveral Concurrent Proofs : To which Purpoſe ſeveral Witneſſes were examin'd.

Then the Council for the Bill offer'd to produce the intercepted Letter from Mr. *Kelly* to Mr. *Gordon Junior*, Banker at *Bologne* dated *April 22d. 1722*, with a Packet inclos'd, conſiſting of 3 Letters, one to *Chivers*, (Gen. *Dillon*) ſigned T. *Jones*, another to *Musgrave* (Earl *Marr*) ſign'd T. *Illington*, and a third to Mr. *Jackson*, (the Pretender) ſigned 1378, dated *April 20th*, part of each of them writ in Cypher, and which appearing by the Matter to be from the ſame Perſon, and the Letters, to *Musgrave* and *Jackson*, being encloſed in that to *Chivers*, were ſuppoſed to have been dictated to *Kelly*, by the Bishop of *Rocheſter*. But the Council for the Priſoner ſtrongly oppoſed the reading of thoſe Letters as

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Evidence,



Evidence, and, several Peers, particularly the Lord BINGLEY, took great Pains in Examining the Decyphers, Mr. Willes, and Mr. Corbiere, as to the Rules and Certainty of their Art. They both aver'd, ' That they had decypher'd the Letters ' in question, at a great Distance one from the other, ' and without their communicating their Keys to ' each other, or having any Key communicated to ' them ; and that the Rules they went by were ' almost as certain and infallible as any used in Mathematical Demonstration : ' But having, at the same time own'd, That in their several Explications of what was writ in Cypher, there had happen'd some small VARIATIONS, (such as the Word CARE, and to PROVIDE, in the one, and CONCERN and to PROCURE, in the other) a Debate arose, upon the Question, whether Copies of Letters intercepted at the Post-Office, and decyphered, should be read as Evidence ? The same being carried in the Affirmative, the Council for the Bill proceeded in their Evidence, till about Nine of the Clock, in the Evening, when the House adjourn'd.

The next Morning, (*May 1<sup>st</sup>.*) about Eleven a Clock in the Morning, the House of Peers being sat again, and Mr. Kelly brought to the Bar, the Council for the Bill produced and examin'd several other Witnesses and then summ'd up their Evidence, which lasted till about four a-clock in the Afternoon. After this Sir *Constantine Phips*, and Counsellor *Prat* made each a long Pleading in their Client's Defence, and, in particular, shew'd the Danger of such an unprecedented Way of Proceeding without full and legal Proofs, in Cases, where the Lives, Liberties, and Properties of the Subject were concern'd ; After which they produced and examined Witnesses, to invalidate the Evidence given for the Bill, and in particular,

*Neynoe*

*Neynoe's Informations.* Among the rest, Mr. *Bingley*, who was taken up at *Deal* with *Neynoe*, deposed, ' That *Neynoe* had several times own'd to him, That in order to humour those in Power, and to get Money from them, he had told them several Stories of a pretended Conspiracy; That by this Means, he got three or four Hundred Pounds from Mr. *Walpole*. And, that among other Drudgeries which Mr. *Walpole* required him to do, He prevail'd with him, to convey into one of Mr. *Kelly's* Drawers a List of Names of Persons concern'd in the Conspiracy; that the said List might be seized, when *Kelly* was apprehended.' This being a Charge of a very heinous Nature upon a Person of so eminent and distinguish'd a Character, it was thought proper, that Mr. *Walpole* should have an Opportunity to clear himself; Upon which that Affair was farther adjourn'd to the next Morning.

Accordingly, on *Thursday*, the 2d. of *May*, the Commons, upon a Message from the Lords, having given Leave that Mr. *Chancellor of the Exchequer* might attend their Lordships House, to be examin'd as a Witness, Mr. *Walpole*, upon Oath, gave their Lordships a full Account of the whole Matter. He said, among other Particulars, ' That on *Saturday*, the 28th of *July* 1722, he receiv'd a Letter subscribed S. T. intimating, That if the Person who wrote it receiv'd Encouragement, he would make considerable Discoveries, and if an Advertisement acknowledging the Receipt of this Letter, and complying with the Proposal, were inserted in the Gazette, the writer would wait upon Mr. *Chancellor of the Exchequer*, by the Name of *Walton*. That it being then too late to have an Advertisement inserted in that Day's Gazette, the same was deferr'd till *Tuesday* the

‘ the last Day of July. That the next Day *Neynoe*, according to his Promise, waited upon him, ‘ Mr. *Walpole*, who finding him at first very willing and free to tell all he knew of the Conspiracy, and to explain some fictitious Names, ‘ made use of in the Letters intercepted by the ‘ Government, unknown to the said *Neynoe*, this ‘ Deponent (Mr. *Walpole*,) gave him, as an Encouragement, first the Sum of Two Hundred Pounds, ‘ by the King’s Order, and afterwards, a Hundred ‘ and Fifty Pounds, at three several Times. To corroborate this Deposition, *Neynoe*’s Letter, of the 28th of July, 1722, and the Advertisements inserted in the *London Gazette*, in Conformity thereto, were produced, which fully destroy’d *Bingley*’s Evidence : For as *Kelly* was taken up about the Middle of May, and Mr. *Walpole* never saw *Neynoe* till the Beginning of August, it was impossible for the latter to tamper with *Neynoe* to convey the List of Names in Question, into one of *Kelly*’s Drawers, when he should be apprehended.

This Point being over, the Council for the Prisoner desired, ‘ That they might be at Liberty to ‘ proceed to examine Witnesses to prove, by several Circumstances, That the Letters dated 20th. ‘ April 1722. given in Evidence for the Bill, were ‘ not dictated by the Bishop of *Rocheſter* to the ‘ Prisoner *George Kelly*’ ; but a Motion being made for complying with that Desire, the same occasion’d a very warm and long Debate ; and the Question being put upon the said Motion, it was carried in the Negative by 82 Voices against 47. Whereupon several Lords enter’d the following PROTESTATION, viz.

*Dissentient*’

1. Because it was insisted on by the Prisoner’s Council, that the Proof desired was necessary to his

his Defence, and, if allow'd to be made, would contribute to satisfy the House of the Prisoner's Innocence of the Crimes charged on him by the Bill ; for which Reason alone, if there was no other, we think the Witnesses ought to have been examined, it being, in our Opinions, against the constant Course and Rules of Justice, in criminal Proceedings of all kinds to preclude the Prisoner's Defence, by refusing to hear his Witnesses, if they are legal and competent ; and in Derogation of the Honour and Justice of the House, on this Occasion, to anticipate the Judgement of the House in the least Circumstance which the Prisoner, or his Council, insist on to be material to his Defence, and which may, if proved, be of Weight in the Consideration and Judgment of the House.

2. It appears to us, to tend directly to prove the Guilt or Innocence of the Prisoner, to discover whether the Bishop of *Rochester* did dictate to the Prisoner the Letters mentioned in the Question, because it was declared to the House by the Council for the Bill, in opening the Charge against the Prisoner, that the Letters, tho' wrote by the Prisoner were dictated to him by a greater Person : And altho' the Council for the Bill, when called upon, did not think fit to name that greater Person ; yet it being suggested in the Report of the House of Commons communicated to this House, and it being universally supposed hitherto, that the Bishop of *Rochester* did dictate the said Letters to the Prisoner, it became, in our Opinions, incumbent on the Prisoner to give the House what Satisfaction he could in that Particular ; the same being made a Circumstance, and Part of the Accusation against him, and, if falsified, or rendred incredible, might influence the Judgment of the House in other Circumstances.

3. Be-



3. Because the Declaration of *Philip Neynoe* deceased, tho' not signed or sworn to by him, hath been allowed by the House to be read and given in Evidence, in Proof of the particular Facts charged on the Prisoner in the Bill; in which Declaration the Prisoner is expressly charged by the said *Neynoe*, to have frequently told him, that the Bishop of *Rocheſter* held Correspondencies with the *Pretender*, and the *Pretender's* Agents; and that the Prisoner was employed by the Bishop in writing for him, and carrying on the said Correspondencies, and that he had several times left Mr. *Kelly* at the Bishop's Door, when Mr. *Kelly* went into the Bishop's House, and stayed there an Hour or two, and upon coming back to him, that the Prisoner made Apologies for staying so long, and told him, *he had been writing the Bishop's Letters*, which he always apprehended to be the foreign Correspondence of the Bishop with the Pretender's Agents: For which Reason also we conceive the Proof desired ought to have been received, because it may be thought a Denial of Justice by this House to the Prisoner, not to permit him to answer, even by legal Evidence, the particular and direct Evidence which the House hath allowed to be given against him.

4. Altho' the Prisoner may be guilty of a treasonable Correspondence, if he wrote the Letters mentioned in the Question, and the same were not dictated to him by any Person whatsoever; yet the Facts charged in the Bill having been endeavoured to be proved, not by direct Proofs of the Facts themselves, but by Circumstances, in our Opinions, the Prisoner's Defence must be applied to answer the several Circumstances; and it is, as we conceive, equally unjust to deny him the Liberty of falsifying that Circumstance, of his writing



ting the Letters being dictated to him by the Bishop, as it would be to refuse to allow him to prove that the said Letters were not, or could not, be wrote or sent to the Persons to whom they are suggested or charged to have been wrote or sent, or to refuse him to prove, by Circumstances, that the Prisoner himself did not, or could not write the same, at the particular Times and Places, the same are suggested to be so wrote or sent by him, or to deny him Liberty to falsify, by Circumstances, any other Circumstance relating to the supposed treasonable Correspondence charged on him by the Bill.

5. The Council for the Bill having alledged, as one Reason, against the Examination desired, That they were not prepared to answer that Evidence, might have been a Ground for the House to have allowed them a reasonable Time for such Preparation; but, in our Opinions, that Consideration ought not to weigh against the Prisoner giving the Evidence to the House which he was prepared to give, especially since it was alledged, that the Examination now desired, was desired on the Prisoner's Part to have been made at the Bar of the House of Commons, and thereby so long ago publicly notified by the Prisoner.

6. Because the Refusal of the Proof of any Circumstance of the Prisoner's Defence, if such Refusal be not just, must, in its Consequence, affect the Justice of this whole Proceeding against the Prisoner; because it deprives the House of the Liberty of forming a Judgment upon the whole Case, and tends, so far as that Particular goes, to subject this Proceeding against the Prisoner to the Objection of Partiality, which is most highly dishonourable to this House, especially considering the Latitude which hath been allowed in other Parts of the Examination, on this Occasion.

|                         |                          |                   |
|-------------------------|--------------------------|-------------------|
| <i>Arundel</i>          | <i>Strafford</i>         | <i>Litchfield</i> |
| <i>Pomfret</i>          | <i>Scarsdale</i>         | <i>Anglesey</i>   |
| <i>Northampton</i>      | <i>Stawell</i>           | <i>Cardigan</i>   |
| <i>Craven</i>           | <i>Bathurst</i>          | <i>Osborn</i>     |
| <i>Wharton</i>          | <i>Trevor</i>            | <i>Compton</i>    |
| <i>Cowper</i>           | <i>Masham</i>            | <i>Bruce</i>      |
| <i>Fr. Cestrien</i>     | <i>Willoughby de Br.</i> | <i>Lechmere</i>   |
| <i>Foley</i>            | <i>Brook</i>             | <i>Dartmouth</i>  |
| <i>Montjoy</i>          | <i>Weston</i>            | <i>Bingley</i>    |
| <i>Leigh</i>            | <i>Ashburnham</i>        | <i>Aylesford</i>  |
| <i>Berkeley de Str.</i> | <i>Gower</i>             | <i>Uxbridge</i>   |
| <i>Middleton</i>        | <i>Poulet</i>            | <i>Tadcaster</i>  |
| <i>Salisbury</i>        | <i>Guilford</i>          | <i>Exeter.</i>    |
| <i>Hay</i>              | <i>Denbigh</i>           |                   |

The Council for the Prisoner having made some further Observations on the Evidence given for the Bill, and summ'd up their own Evidence, Mr. Kelly Spoke, in his own Defence, to the Effect following.

*My LORDS,*

‘ **S**INCE my Council have so fully answered every Article alledged against me, it may seem unnecessary to take up Your Lordships Time, by saying any thing for my self. And, indeed, it would be so, if my Charge were Ordinary or Particular. But, my Lords, I have been represented as a Person doubly guilty ; First, In transacting Treason for my Self : and, Secondly, In doing it for other People. These are Crimes of the most heinous Nature ; And if they were as clearly proved, as they have been strongly asserted, I should justly merit your Lordships highest Displeasure, and all the Pains and Penalties you could possibly inflict upon me.

‘ And since my Charge is so very Extraordinary : Since these Proceedings seem to be without any Precedent ; and, That the Innocence of the

ther Persons calls upon me for Publick Justice ; I believe your Lordships will easily allow, That to be silent, in such a Case, would be truly Criminal, and too justly Censured.

‘ To enter into all the Particulars of my Accusation, would take up more Time than is reasonable for me to ask, or for your Lordships to allow : And tho’ the many Inconsistencies, Contradictions, and false Conclusions which appear in almost every Page of the Printed Reports, plainly shew, The Weakness, Absurdity, and Sophistry of them ; however, I shall only beg Leave to touch upon those material Parts, which relate to my self, and my Defence to them.

‘ The First Article which I find my self charged with, is, The Employing of one *Neynoe* to draw up Three Memorials to the Regent of *France*, to sollicite Foreign Forces to invade this Kingdom. And for Proof of this, the Examinations of the same Person, which are neither upon Oath, nor so much as Signed by him (and whom the Committee of the Honourable House of Commons have represented as a very infamous Fellow) are the only Evidence assigned against me.

*This* my Lords, is the Crime ! and *This* the Proof ! ‘ And tho’ the bare mentioning of it, might be sufficient to convince your Lordships of its Weakness ; however, since so great a Weight has been laid upon *this Kind* of Evidence in *another Place*, it will be necessary to be a little more particular about it.

‘ The Two first of these Memorials (*viz.* Those before and after the *South-Sea Scheme*) are but slightly mentioned : But the One pretended to be drawn up in *December, 1721*, (and containing a Demand of 5000 Men) and a Letter said to be written the *March* after (to amuse the Go-

vernment into a false Security) are The chief  
 Things upon which any Stress is laid. And, how  
 False both these Allegations are, has evidently  
 appeared to your Lordships. For, had my Ac-  
 cuser been really employed to draw up any such  
 Memorials, it is reasonable to believe, that he  
 would have Copies of some, and especially of  
 the Last of them; since a Person who turned In-  
 former so suddenly after, may very well be pre-  
 sumed to have had Thoughts of it for some  
 Time before; and such Papers would, no doubt,  
 give great Weight to his Information. But the  
 Ministry have produced no such Copies; neither  
 do they pretend to have them: Which is a very  
 great Indication, that there never were any such  
 Memorials at all.

Besides, There are no Two of his Examinations  
 of a Piece. Nay! he contradicts himself in al-  
 most every one of them. For, in his Second  
 Examination, he says, That these Memorials  
 were all drawn up by the Order of one *Henry*  
*Watson* (whom he really did not know, but took  
 to be the late Earl *Marishall*) without making the  
 least Mention of me. In his Third Examina-  
 tion, he says, They were delivered to me and  
*Watson*; And in his Fourth, he says again,  
 They were all drawn up by the Order of *Henry*  
*Watson* ONLY. And in a few Lines after, contra-  
 dicts himself, and says, that the Heads of them  
 were given to him by *me* and *Watson*: Which  
 are such Inconsistencies, as (your Lordships will  
 easily grant) are not to be reconciled: And if his  
 Memorials were no better drawn than his Ex-  
 aminations, I believe they were not likely to  
 meet with any great Success.

As to the Earl *Marishall*, how reasonable it is  
 to believe, that a Person in his Circumstances  
 should



' should venture to come into *England* and live  
 ' so openly here, as to intrust himself, and a Se-  
 ' cret of this Nature, to a Fellow, who (by his  
 ' own Confession) did not know him, is humbly  
 ' submitted to your Lordships. And as for my  
 ' Part, it is very plain, that I could have no Hand  
 ' in them, since the *Minutes* in my Pocket-Book  
 ' (in which I could have used no Disguise) agree-  
 ' ing with the concurrent Testimony of *several*  
 ' *Witnesses*, plainly shew, That I was not in the  
 ' Kingdom at the Times in which my Accuser  
 ' pretends to have been so employed. For, by  
 ' those Minutes, and *their* Testimony, it appears,  
 ' That I went to *France* the 23d of *November*,  
 ' 1721, and did not return 'till the latter End of  
 ' the next Month; And my Accuser himself  
 ' owns in his First Examination, That he did not  
 ' see me after my Return, 'till the *January* follow-  
 ' ing; which makes it impossible, That he could  
 ' have been so employed by me in *December*, since  
 ' I was most part of that Month out of the King-  
 ' dom; and the few Days of it that I was here,  
 ' he owns he did not see me.

' Nor has the other Part of his Information re-  
 ' lating to the Letter (which he pretends to have  
 ' drawn up in *March*) better Grounds — For, by  
 ' the same Minutes, and by the same Evidence, it  
 ' likewise appears, That I went to *France* the 22d  
 ' of *February* after, and did not return 'till the mid-  
 ' dle of *April*, which makes it as impossible, that  
 ' he could have been employed by me in *March*,  
 ' since I was then likewise out of the Kingdom.  
 ' Had this Examination been taken at any Distance  
 ' of Time, it is possible he might be mistaken in  
 ' it; but his first Information must have been about  
 ' the middle of *April*, soon after my Return from  
 ' *France*; for he confessed to the Person taken up  
 ' with



' with him at *Deal*, That he was the first who  
 ' set the Ministry upon intercepting Letters. And  
 ' the first Letters so intercepted, are owned, in  
 ' the 42d Page of the Report made to the Lower-  
 ' House, to have been the 22d of *April*, 1722.—  
 ' And, surely, he cannot be supposed to have for-  
 ' got so soon, what happened the very Month be-  
 ' fore ; especially, since he has been so particular,  
 ' as to name the very Day, (*Saturday*) upon which  
 ' he says this Letter was so drawn up. By all  
 ' which it plainly appears, That this Article is  
 ' not only Groundless, but evidently False ; And  
 ' likewise, That he had no such Intimacy with me  
 ' (as the Report pretends) since he has declared,  
 ' That I never spoke to him of the Conspiracy ;  
 ' and that I could be a Month *at one Time*, and Two  
 ' Months at another, out of the Town, without his  
 ' knowing any thing of it. As to what is said to  
 ' his coming sometimes to my Lodgings, I believe  
 ' it may be true ; but it has been fully proved,  
 ' That his Visits were never to me, but always to  
 ' another Person, who lodged in the same House.  
 ' And, I do solemnly affirm to your Lordships,  
 ' that I never was acquainted with the late Earl  
 ' *Marishall*, or with any such Person who went by  
 ' the Name of *Watson* : That I knew very little  
 ' of my Accuser ; so little, That I am confident,  
 ' I never spoke to him Ten times in my Life ;  
 ' nor ever employed him in this or any other  
 ' Affair whatsoever.

' *The second Article charged upon me, is, the carrying*  
 ' *on of a Treasonable Correspondence for the Bishop of*  
 ' *Rocheſter.* And, for Proof of this, the Exami-  
 ' nation of the same Person is the only Evidence  
 ' produced against me, wherein he says, That I  
 ' frequently told him the Bishop was concerned  
 ' in such a Correspondence ; and that I managed it  
 ' for

for him ; with other Particulars not worth mentioning. How reasonable it is, that I should tell such a strange Untruth to a Person that I knew so very little of, and what Credit ought to be given to his bare Assertion, who has affirmed such Gross and Notorious Falsehoods in the former Article, must be submitted to your Lordships. And, in my present unhappy Situation, I cannot but think it a very great and singular Happiness, to have so Publick and Honourable an Occasion of purging myself from so vile a Calumny, and of doing Justice to that most Worthy and Learned Prelate.

And I do solemnly declare to your Lordships upon the faith of a Christian, That I never wrote or received a Letter of any kind for the Bishop of *Rocheſter*, or was privy to any Correspondence of his at Home or Abroad : That I never shewed him any Letter that ever I wrote to *France*, or ever sent one there by his Privy or Direction : That I am very little known to his Lordship, went very rarely to wait upon him ; so rarely ! That I am confident few of his Servants know either my Name or Face ; and have not seen him above Three or Four Times these Two Years past, and not above Eight or Ten times in my whole Life.

I do farther declare, That my Visits to his Lordship were always Publick ; That I never went privately in a Chair to his House ; always found other Company with him, who were generally Strangers to me ; and never once mentioned his Name, upon this or any other Account, to the Person who has thus accused me. Which with the Evidence that has been produced of his own Confessions to that Purpose, is, I hope, sufficient to convince your Lordships of the Truth of it.

And

‘ And as for the Dog, which has been brought  
 ‘ as a Circumstance to prove this Matter, I do,  
 ‘ in the same solemn Manner declare, That he  
 ‘ was given to me by a Surgeon at *Paris*, (*whose*  
 ‘ *Affidavit has been offered to be produced*) and who,  
 ‘ at that Time, I do verily believe, never heard of  
 ‘ his Lordship’s Name ; And that he never was  
 ‘ design’d for any body but the Person I gave him to.  
 ‘ And I appeal to the very Ministers themselves,  
 ‘ if the *British* Resident at *Paris* (who is constant-  
 ‘ ly attended by that very Surgeon, and exami-  
 ‘ ned him about it) has not confirmed the Truth of  
 ‘ this Account to them. I do farther affirm, That  
 ‘ the Bishop of *Rocheſter* never ſaw him ; Never  
 ‘ received any Letter or Meſſage by me, nor (do I  
 ‘ believe) by any other Perſon about him : Nei-  
 ‘ ther did I ever know or hear, That his Lord-  
 ‘ ſhip had any Intercourſe or Correſpondence with  
 ‘ the late Earl of *Mar*, or any other diſaffected  
 ‘ Perſon Abroad.

*My LORDS,*

‘ It cannot be imagined, that I have any par-  
 ‘ ticular Intereſt or Concern in this Matter ; for  
 ‘ I never received any Favours from his Lordſhip ;  
 ‘ neither do I owe him any Obligations, but thoſe  
 ‘ of Common Juſtice : And thoſe I ſhould perform  
 ‘ where I have ſo much Truth of my Side, to  
 ‘ the greateſt Enemy I have upon Earth. As for  
 ‘ the other Circumſtances, brought to ſtrengthen  
 ‘ my Accuſer’s Examinations, and are ſet forth  
 ‘ in one *Pancier’s* Depoſition, They will appear, I  
 ‘ don’t doubt, as Groundleſs and Inconſiſtent as the  
 ‘ Examinations themſelves. For, This Perſon  
 ‘ ſwears, That another told him of this Conſpira-  
 ‘ cy ; That Six or Eight Battalions of *Irish* Forces  
 ‘ were to come from *Spain* to aſſiſt the Conſpira-  
 ‘ tors. That 200,000 *l.* were raiſed, and 800 Men re-

gularly

regularly subsisted for this Purpose in *London*. These, My LORDS, are called, in the 38th Page of the Report of the Lower House, *The Concurrent and Corroborating Proofs* of my Accuser's Examinations: And I humbly appeal to your Lordships, if any one of them carries the least Colour of Reason or Probability with it. For, can it be imagined, That such a Force should come from *Spain*, when there appears to be so strict a Friendship between the two Kingdoms? Or, That 200,000 *l.* could possibly be raised among all the Disaffected in *England*, in case there was a Licence for it? Or, 800 Men regularly subsisted in this City, without a Discovery? These are such idle, inconsistent *Tales*, as (I am persuaded) can never have any Weight with your Lordships. Besides, my LORDS, this is only bare Hear-say; And if the Hear-say of such *Infamous Persons* (or, indeed, of any Persons) be look'd upon as sufficient Evidence, I believe, no Man in *England* can be sure of his Life or Liberty an Hour, since any Two People may talk him in- to High-Treason whenever they please; and the greater the Person is, the greater his Danger always will be.

The Third Crime which I stand charged with, is, The Writing of Three Treasonable Letters for the Bishop of *Rocheſter*, supposed to be for the Pretender, the late Earl of *Mar*, and General *Dillon*, which Letters are said to have been sent by me to Mr. *Gordon* at *Bologne*, with Directions to be delivered to one Mr. *Talbot*. And for Proof of this, the Clerks of the Post Office are produced who swear, That those Letters were (to the best of their Knowledge) written in the same Hand with an Original which was stopt as a Specimen of it. Which Original has been sworn by Two Persons



to be my Writing, and consequently those Letters must be so too.

*My LORDS,*

These Letters are dated the 20th of *April*, and the Specimen so stopt, the 20th of *August*; Just Four Months after. And how is it possible for People (who receive such a Number of Letters) to swear to a Likeness of Hands, at such a Distance of Time; and what Weight ought to be laid upon this kind of Evidence; or upon that Modern and Mysterious one given by the Decyphers, in which they don't pretend to a Certainty themselves, must be submitted to your Lordships. And as to the Persons who have Sworn to my Hand, I hope it will be considered, That one of them is a *Messenger*, who never saw any of my Writing, but the Superscriptions of a few Letters, which (your Lordships may easily see) do not bear the least Likeness with what he has sworn to. Besides, this very Person was turned out of his Employment upon my Account; and a few Days after he gave this Evidence in the House of Commons, I saw a Paragraph in the News-Papers, that he was restored to it again. And as to the other, it is to be hoped, That it will be likewise considered, That he is a Servant, who attended me only about Three Weeks, and was turned off for an Infamous Action, which he has acknowledged himself to have been guilty of: Besides, he has confessed, That he never saw me write, but as he went backwards and forwards in the Room; and at such a Distance, as not to be able to distinguish one Character from another: And it has been proved by two Witnesses, (one of which was a particular Friend of his own) That he declared, he never knew any thing of my Hand; but was Threatned by the Secretary into the Affidavit,

which

which has been Printed in the *Appendix*. And if  
 that Paper had been my writing, it is impossible  
 they could be reduced to a Necessity of making  
 use of such improper Evidence, since no Pains  
 have been spared to procure better; since Num-  
 bers of People have been taken up, confined and  
 examined to this very Point; and *Newgate* sent  
 to, more than once, for Witnesses to it. And tho'  
 it might be proved by the very Report of the  
 Lower House, That those Letters could not have  
 come from the Bishop of *Rocheſter*; however, my  
 Buſineſs is only to convince Your Lordſhips, That  
 I was not the Writer of them, and of this, I be-  
 lieve, it is impossible to give clearer Proofs than  
 I have done: For if thoſe Letters had been dicta-  
 ted to me the Twentieth of *April* (as the Report  
 pretends) it muſt have been at his Lordſhip's  
 Houſe in the Country; ſince it appears by the  
 Depoſition of his Coachman, that he went there  
 the 12th of that Month, and did not leave it till  
 the 5th of *May*.

But it has been proved, that I was in *London* ALL  
 that Time; and if it had been permitted, there  
 is not a Perſon in the Biſhop's Family, but would  
 teſtify; That I was not then at his Houſe in the  
 Country; and, conſequently, could not have  
 written any ſuch Letters for him. Beſides, I  
 have brought ſeveral Perſons of Credit and un-  
 doubted Characters, who have all teſtified, that  
 the Hand in which thoſe Letters are ſaid to be  
 written, is not mine, nor any thing like it.

An Affidavit has been produced from Mr. *Gor-*  
*don*, That he never received any ſuch Letters  
 from me, nor ever had any Correſpondence, or  
 even an Acquaintance with me.

And it has been likewise proved, That Mr.  
*Talbot*, to whom thoſe Letters are ſaid to be de-

' delivered by Mr. Gordon, was in this Town the  
 ' very Day upon which they are said to have been  
 ' delivered to him at *Bologne* : And if I had any  
 ' such Letters to transmit, can it be imagined, that  
 ' I would trust them to the Common-Post, when  
 ' I had so good an Opportunity to send them by,  
 ' or direct them to *Bologne*, when the same Post  
 ' might as well have carried them to *Paris*? These  
 ' are such full, such evident Proofs, as, I hope,  
 ' cannot fail of giving your Lordships the utmost  
 ' Conviction in this Matter; and, consequently,  
 ' that this Article is, like the rest, both Ground-  
 ' less and manifestly False.

' But, if any Credit is to be given to the Confessi-  
 ' ons which my Accuser made to the Person taken  
 ' up with him, it is very plain, that those Letters  
 ' must have come from *another Quarter*; and, to  
 ' say no worse, were at least calculated to carry on  
 ' his own *base and villainous Designs*.

' For it has been proved to your Lordships, that  
 ' he Confessed to have been employed by one of  
 ' the Ministers, received 300 *l.* from him, and was  
 ' to have 2000 *l.* more. That this Minister de-  
 ' clared a Personal Prejudice, upon some private  
 ' Account, to the Bishop of Rochester; was resolved  
 ' to pull down the Pride of that Haughty Prelate, and to  
 ' squeeze me (as I think the Expressions were) to  
 ' that Purpose.

My LORDS,

' I say, if any Credit is to be given to this Con-  
 ' fession, there can be no great Difficulty in tra-  
 ' cing out the Source of *this Part* of the Conspiracy  
 ' and I am heartily sorry to say, That there are  
 ' some Circumstances which seem to give but too  
 ' great a Countenance to the Truth of it. For, my  
 ' LORDS, He made this Confession at a Juncture  
 ' when he may very well be supposed, to have spoke

' in the Sincerity of his Heart ; when he saw his  
 ' Villainy detected ; believed himself to be in the  
 ' greatest Danger, and depended upon the Person's  
 ' Assistance (to whom he made it) to help him out  
 ' of his Misfortunes. — And how particular  
 ' this Prosecution is, and how sufficiently I have  
 ' been *Squeezed*, are Things but too visible, and too  
 ' well known to the World.

' Besides, the very Cypher by which those Let-  
 ' ters were written, (*and which he owned to have re-*  
 ' *ceived from that Minister*) was actually caught upon  
 ' the Person to whom he gave it ; and he confessed,  
 ' That he put a Paper of Directions into one of my  
 ' Drawers, by which (the Report says) most of  
 ' the Treasonable Letters were Addressed. And it  
 ' has been proved to Your Lordships, That those  
 ' Drawers were constantly open, and that he made  
 ' some Pretext for being alone in my Lodgings, the  
 ' very Night before I was first taken up. And since  
 ' he was the first that set the Ministry upon inter-  
 ' cepting Letters, which he said were mine ; it is  
 ' very extraordinary, that such a material Part of  
 ' his Evidence should be omitted in his Examina-  
 ' tion ; or that the very first Letters, so intercepted,  
 ' should be those alledged against the Bishop of *Ro-*  
 ' *chester* : And if the Originals of those Three Let-  
 ' ters were stopt, I don't at all doubt, but they  
 ' might be proved to be my ACCUSER'S OWN HAND-  
 ' WRITING. And how strong a Sense he had of his  
 ' Guilt, by attempting an Escape, which proved  
 ' fatal to him ; and how visibly the Hand of God  
 ' has interposed in that Eminent Prelate's Favour,  
 ' by taking one of the Persons (designed for his De-  
 ' struction) out of the World, and giving the other  
 ' *Grace* and *Virtue* enough to withstand all Tempta-  
 ' tions to his Prejudice, are Things highly worthy  
 ' of your Lordships just and most serious Consid-  
 ' ration,



' ration, and no small Indication of his Innocence.  
 ' And as to the Money which my Accuser owned  
 ' to have received ; That there was a very sudden  
 ' and extraordinary Change in his Condition ;  
 ' That from the lowest State, of Poverty and Want,  
 ' he soon arrived to that of a Vicious and most  
 ' Profligate Affluence, is a Truth sufficiently known  
 ' to all those that were acquainted with him. But  
 ' from whence this Change proceeded, or what real  
 ' Grounds he had for aspersing that Honourable  
 ' Person, I will not pretend to say : But if those  
 ' Aspersions be false (as I wish they may) it may  
 ' be justly inferred, That a Fellow who was capa-  
 ' ble of vilifying one Person, may very well be  
 ' judged as capable of doing so to another : And  
 ' if his Veracity is not to hold good in one Case,  
 ' there can be no Reason for allowing it in the  
 ' other.

' The fourth Crime alledged against me, is, a  
 ' Number of intercepted Letters, supposed to be  
 ' written to and received from the late Earl of  
 ' *Mar*, General *Dillon*, and other Disaffected Persons  
 ' Abroad. And for Proof of this, a *Frenchman*  
 ' has been produced, who swears, That he once  
 ' saw me take up a Letter at *Burton's* Coffee-house,  
 ' by the Name of *Baker*, which Name (it is said)  
 ' some of the Treasonable Letters were addressed  
 ' by ; and was, in a Paper of Directions, found  
 ' in my Lodgings. — How that Paper came  
 ' there, has been already proved ; And as to the  
 ' Person who has swore to this Particular, I must  
 ' observe, That when he gave this Evidence to the  
 ' House of Commons, he did not know me, tho'  
 ' he spoke to me, and look'd several times ear-  
 ' nestly at me ; and for the Truth of this, I can  
 ' appeal to most of the Members of that Honou-  
 ' rable House, who were Witnesses of it : And  
 ' he

' he would still have probably continued in his Ignorance, if some private Hints, (as I have been told) were not given him, or the same Method taken which has been done with a Number of other strange Fellows, who were frequently sent to the *Tower*, and had no other Business but to take a View of me. Besides, the People of the Coffee-house have testified the contrary, and that no such Letter ever came to their House. And tho' it be set down in my Examination before the Council, That I confessed to have taken up such a Letter, I humbly appeal to my Lord Chancellor, (if it can be worth his Lordship's While to recollect it) If he did not ask me that very Question two or three times? And if I did not as often deny it? Neither is this the only Particular that is falsely set down in that Examination. And I do solemnly affirm to Your Lordships, That I never did receive any such Letter, nor ever saw that Paper of Directions, 'till it was Printed in the Report. And there is one Circumstance pretty Remarkable in this Correspondence, That as it began with my Accuser's Information, so it ended with his being taken up. For immediately after a new Correspondence is pretended to be discovered; and to fix this likewise upon me, it has been suggested, that I sent Cyphers by Sir *Harry Goring* to *France*, and had Letters directed by them to *Sturges's* and *Slaughter's* Coffee-house.

' But, my LORDS, no such Cyphers were found in my Custody, nor any Papers relating to such a Correspondence, and the People of those Coffee-houses have all sworn, That I never Ordered any Letters of *that kind* to be taken in, or received one, either by my own or any other Name from them. Nay! one of them has sworn, That no  
 ' such

‘ such Letters ever came to his House at all ; and  
 ‘ the other says, That a Messenger from the Secretary’s Office, was the only Person that ever  
 ‘ called at his House for those directed to it.

‘ As to the Printed Examination of one Mr. *Caryl*,  
 ‘ to this Purpose, it were to be wished, That this  
 ‘ Gentleman’s Reasons had been published, as well  
 ‘ as his Accusation. For I am confident, he will  
 ‘ not pretend to say, that ever he saw me writ a  
 ‘ Line in his Life, or give a Piece of Paper of any  
 ‘ kind to Sir *Harry Goring* ; and what Reason he  
 ‘ could have for believing that we settled a Key for  
 ‘ such a Correspondence, is very extraordinary :  
 ‘ Nor have the other Particulars which he has  
 ‘ Affirmed, the least Foundation of Truth ; for I  
 ‘ do solemnly averr, That I never saw *Sample* in  
 ‘ my Life, or gave Captain *Bonin* any such Letter  
 ‘ of Recommendation : Neither had I ever the Honour  
 ‘ of speaking to my Lord *North and Gray*, or  
 ‘ of being any ways known to his Lordship ; and  
 ‘ that I should mention him so familiarly by the  
 ‘ fictitious Name of *Johnson*, (and which, of all  
 ‘ Names, I should never make use of in that manner)  
 ‘ will, I hope, appear very incredible to your  
 ‘ Lordships ; especially since Mr. *Caryl* himself has  
 ‘ furnished so good a Reason for the Disbelief of it.

‘ For he has likewise affirmed, That my Examination  
 ‘ before the Council was read at Doctor *Yalden*’s House :  
 ‘ The Doctor, has, indeed, already done me Justice  
 ‘ in that Point ; and Mr. *Tucker* (who was all the while  
 ‘ in Company) will, I am very sure, do the same.  
 ‘ And since Mr. *Caryl* appears to be so plainly mistaken  
 ‘ in this Particular, surely he may very well be  
 ‘ supposed to be so in all the rest, especially since  
 ‘ he has not assigned the least Reason for any of ’em.

‘ As

‘ As to the rest of the intercepted Letters, the People of the several Coffee-houses have likewise cleared me from them ; and all testify, That they never delivered me any such Letters, or received any Directions from me about them ; which, I hope, will be sufficient to convince your Lordships, that I was not concerned in any such Correspondence, especially since no Letters of this kind were found in my Possession, nor any other Papers relating to the Conspiracy.

‘ There are two other Crimes, in which I most humbly crave your Lordships Patience to be heard, because they are the blackest that can be imagined, and seem to be Personal. The First, is a Letter directed to Mr. *Gordon* at *Bologne*, with two Affidavits, which have been Printed, and are suggested to be sent by my Directions, in order to have him and one *Birmingham* perjure themselves upon my Account : — For in this Letter it is said, *That the Inclosed is a Copy of a Note from the Person concerned with what he thinks requisite.*

My LORDS,

‘ This Letter is dated the 20th of *March* at which Time, and for Five Months before, I never was allowed the Use of Pen, Ink, or Paper, or the Liberty of seeing any Person that could possibly have conveyed such a Note for me ; for I have been guarded in a different Manner from other People in the *Tower* : My Warders were put into the very Room with me, and ordered never to stir a moment, Night or Day, out of it ; which Orders they punctually obeyed, and were constant Witnesses to all my Actions.

‘ And those Warders will depose, That they believe, it was impossible for me to have written or sent out any such Directions ; the Officers, I don’t doubt, will do me the same Justice. And when my

D

‘ Solicitor



‘ Solicitor was admitted, finding that Mr. *Gordon’s*  
 ‘ Affidavit might be of use, if allowed as Evidence,  
 ‘ a Person was immediately dispatched, and who  
 ‘ brought it in a different Form from those which  
 ‘ have been Printed. And my Solicitor can testify,  
 ‘ That no Draughts were sent by him; which,  
 ‘ with the gross Management of the Persons con-  
 ‘ cerned in this Affair, is, I hope, sufficient to  
 ‘ give your Lordships the clearest Conviction of  
 ‘ my Innocence in it. And I do solemnly affirm,  
 ‘ That I never knew any Thing of them; never  
 ‘ heard of the Name of *Akenhead* before; nor can I  
 ‘ find out any Person (besides the Master of that Vel-  
 ‘ sel) that ever did.

‘ The other Crime is set forth in one *Levett’s* De-  
 ‘ position in the Report made to this most Honoura-  
 ‘ ble House: Wherein (among a great many other  
 ‘ most notorious Falsehoods) she swears, That one  
 ‘ Mrs. *Barnes* told her, That I was instrumental in,  
 ‘ or privy to, the shutting up of a Person in a  
 ‘ Dungeon, for Fear of his turning Informer; and  
 ‘ not only of him, but of 200 more upon the same  
 ‘ Account. Which, I believe, is the most surprizing  
 ‘ Crime that ever yet was alledged against any Chri-  
 ‘ stian. Mrs. *Barnes* denies every Syllable of this  
 ‘ Conversation; and if the Person that swears this  
 ‘ against her, had been produced, she would be pro-  
 ‘ ved to your Lordships to have been a vile infam-  
 ‘ ous Creature all her Life. And if she is to be  
 ‘ believed, or that your Lordships can think it pos-  
 ‘ sible there can be the least Truth in her Deposi-  
 ‘ tion, it will be a Sin to let me live, and impos-  
 ‘ sible to find out a Punishment too Cruel for me.

‘ These, my Lords, are the Chief Crimes which  
 ‘ I am charged with; and very great ones they are,  
 ‘ had they been in any Degree made out against me.  
 ‘ I am a Stranger to the Methods of Legal Proof,  
 ‘ but

but have been told by Council, That the greater a  
 Person's Crime is, the clearer the Evidence ought  
 to be against him ; and how weak and insufficient  
 the Proofs produced for this Purpose are, and how  
 clear and convincing those which have been offered  
 in my Justification, has, I hope, evidently appeared  
 to your Lordships, and given you intire Con-  
 viction of my Innocence ; and that all the Crimes  
 alledged against me, are without the least Colour  
 or Foundation of Truth. But how much I have  
 suffered for these *supposed* Crimes ; and what ex-  
 traordinary Means have been made use of against  
 me, are Things much worthier of your Lordships  
 Judicial Consideration. To be taken up and held  
 to exorbitant Bail, without ever assigning any par-  
 ticular Crime against me ; to suffer a Long and  
 Close Confinement, where the Expence bears no  
 Proportion to my Circumstances : To have  
 Numbers of People, and some of them Creatures  
 of the meanest Rank and Condition, taken up, ex-  
 amined, and *tampered* with, upon my Account ;  
 and *Newgate* sent to for Witnesses : To have a Ser-  
 vant (who was turned off for his Ill-Behaviour)  
 brought as an Evidence ; and my most intimate  
 Friends Imprisoned for not swearing against me ;  
 are Hardships and Proceedings, I believe, hither-  
 to unheard of in *England* ; and such as, I hope,  
 your Lordships will, in your great Wisdom and  
 Justice, think fit to redress. All which is of a Piece  
 with an infamous Offer made to myself by one of  
 the Under Secretaries of State, who, the Morn-  
 ing after I was first examined, came to me with a  
 Message (as he said) from one of his Superiors, to  
 let me know, *That I had now a very good Opportunity of*  
*serving myself ; and that he was sent to offer me my own*  
*Conditions.* And when I declared myself an intire  
 Stranger to the Conspiracy, and was sorry to find

' that Noble Lord have so base an Opinion of me,  
 ' he seemed to Wonder, that I would neglect so  
 ' good an Occasion of serving myself, *especially when*  
 ' *I might have any Thing I pleased to ask for.* What  
 ' Authority that Person had for this Message, or  
 ' the rest of his After-Proceedings, I will not pre-  
 ' tend to say: But as I have been Ruined and utterly  
 ' Undone by them, I hope your Lordships will  
 ' take my Sufferings, as well as Circumstances, into  
 ' your Consideration; and, instead of Inflicting any  
 ' farther Pains and Penalties, look upon me (as I  
 ' really am) a Person highly Injured, and not a  
 ' Criminal concerned in any Transactions against  
 ' the Government.

' As for my Circumstances, they are but too well  
 ' known in the World.

' And here I cannot omit my Gratitude to the  
 ' late and present Constables of the *Tower*; for the  
 ' late Constable (though I never had the Honour to  
 ' see his Lordship) was, upon a Representation of  
 ' my Circumstances, so very good, as to procure me  
 ' the Promise of an Allowance from the Govern-  
 ' ment; and his Lordship, the present, has been so  
 ' kind as to get it paid: But the Officers of the  
 ' Place can testify, That this Allowance has not  
 ' been converted to any Private Use of mine, but  
 ' constantly given to the Persons appointed to at-  
 ' tend me. And I must take leave to assure your  
 ' Lordships, That it has cost me more since I was  
 ' sent there, than the Government have now left  
 ' me really worth in the World; and I must sud-  
 ' denly become a Sacrifice to my Necessities, if not  
 ' set at Liberty by your Lordships great Clemency  
 ' and Compassion.

' If I have dropped any Expression which may  
 ' not be so agreeable to some particular Persons in  
 ' Power, I could wish that my Defence had not laid

me

me under that Necessity: And I do solemnly  
 protest, that they have not proceeded from any  
 Resentment for my Sufferings; but from a Sin-  
 cere Endeavour to give your Lordships the clearest  
 Conviction of my Innocence. And since I could  
 not merit their Favour, I shall always endeavour  
 to preserve their good Opinion.

As to the Legality of *these* Proceedings, and  
 the Danger of making Precedents of this Kind,  
 those are Things which have been already fully set  
 forth by my Council, and must be submitted to  
 the great Wisdom and Jurisdiction of this most  
 illustrious Assembly; An Assembly! Which is  
 not only the Highest and most Honourable, but  
 the Uprightest and most Impartial, I believe, upon  
 Earth; and whose Justice has ever appeared as ex-  
 tensive as their Power. The great, and, the *only*  
 Argument, which I have heard offered for the  
 passing of this Bill, is, That the Occasion is Ex-  
 traordinary; that your Lordships are in your Le-  
 gislative Capacity; and though the Proofs may not  
 be so legal, however, in *Terrorem*, it is necessary to  
 pass it. But I humbly beseech your Lordships to  
 consider, where the Extraordinariness of this Oc-  
 casion lies? — Has there been the least Commo-  
 tion in any Part of the Three Kingdoms? Or  
 any Person injured in his Liberty or Fortune, be-  
 sides those who have been so unhappy as to fall  
 under this Suspicion? Or, Is this Occasion more  
 Extraordinary than when there was a Publick In-  
 surrection in the Kingdom? And when the Per-  
 sons concerned in it, were tried by the Common  
 and Ordinary Courts of Justice? And because  
 your Lordships are vested with a Supreme Autho-  
 rity, and not tied up to the Common Forms of  
 Law, can that be a Reason for your acting direct-  
 ly contrary to it? And to suppose your Lordships  
 capable



' capable of doing so, was not, I must say, so be-  
 ' coming an Argument to have been offered upon  
 ' this Occasion. And to have a Session, which  
 ' opened with so mild, so gracious a Speech from  
 ' the Throne, and in such an Extraordinary Man-  
 ' ner, must surely be very contrary to the Design  
 ' and Intention of the Throne at that Time ; and  
 ' is, I hope, so still ; especially, since no intervening  
 ' Accidents have happened to ruffle the Quiet and  
 ' Tranquility of the Kingdom.

My LORDS,

' The first extraordinary Bill that, I believe, ever  
 ' passed in *England* was that of the Earl of STRAF-  
 ' FORD ; and how much Personal Prejudice was in  
 ' his Prosecution, and how fatal that Bill proved  
 ' in its Consequences, I need not mention, since the  
 ' Royal Martyr himself has, in his dying Words,  
 ' called it, An unjust Sentence, and imputed all his  
 ' Misfortunes to it. And Pray, my Lords, why was  
 ' that Sentence Unjust, but because it was not sup-  
 ' ported by Law ? — And, to the Eternal Ho-  
 ' nour of this House be it said, That when the  
 ' Proofs upon his Tryal were not found Legal,  
 ' They refused to find him Guilty. But when this  
 ' Extraordinary Method was taken, and the Tor-  
 ' rent of the Times bore down their usual Justice—  
 ' then the Flood-Gates of all those Miseries were  
 ' opened, which overwhelmed and sunk the Consti-  
 ' tution : And of which, some of your Noble  
 ' Predecessors had so strong and lively a Sense, as  
 ' to declare, in this very House, That they would  
 ' be sooner torn in Pieces, than come into such Ille-  
 ' gal Proceedings ; And so sell a Sacrifice to the  
 ' Love and Laws of their Country.

' To which I shall only beg Leave to add One  
 ' Observation, that, I am sure, is but too well  
 ' known to that Right Reverend Bench : — That

of all the Prelates who advised his Majesty to the Passing of that Fatal Bill, not One of them escaped the Violence of those very Persons whom they endeavour'd to oblige by that Advice. These, my Lords, were the Unhappy Effects and Fatal Consequences of One Extraordinary Bill: And what those of Another may prove, the Great Director of All Things only can foresee!

Many are the Arguments which might be brought to shew the great Injustice, as well as Inconveniencies, of these Laws in particular: But as my Liberty can be of no great Moment to the World, I shall only beseech Your Lordships, Not through me to give a Wound to the Constitution, which, perhaps, may not so easily be cured. The great Characteristick which distinguishes *England* from the rest of the Neighbouring Nations, is, The Excellency of her Laws, of which Your Lordships are the Great Guardians: And if you suffer those Laws to be broke in upon, and render *Life* or *Liberty* so precarious, as to be affected or taken away, by every idle Hearsay, that Excellency must soon disappear, and the Best Form of Government now upon Earth, consequently sink into Anarchy and Confusion.

My LORDS,

The Words of my Bill are very severe, and do not bear the least Proportion to the Proofs which have been produced against me: And I humbly hope, That my past Sufferings will be look'd upon as a sufficient Punishment; especially, since it is not pretended, that I have transgressed any Law yet in Being. I propose no great Happiness in this Life, and would willingly avoid as much Misery as I could: And must therefore humbly beseech your Lordships, to look upon me as a Stranger in your Kingdom, and a Person (as I really

‘ am) Inconsiderable in my self; and, consequently,  
 ‘ incapable of doing the least Prejudice to any Go-  
 ‘ vernment. For my Behaviour, I am willing to  
 ‘ give the Best Sureties that I am able : But if that  
 ‘ be not approved of, I hope your Lordships will  
 ‘ give me Leave to retire to some other Part of  
 ‘ the World, where I may enjoy my Poverty with  
 ‘ Freedom. But, let my Fate be what it will,  
 ‘ I shall ever pray for your Lordships Particular  
 ‘ Welfare, as well as the General Prosperity of the  
 ‘ Kingdom.

‘ And so resign my self, with the utmost Humi-  
 ‘ lity, to your Lordships great Clemency, Justice,  
 ‘ and Compassion.’

This Speech made a notable Impression on that Noble Assembly, but it being near Twelve a-Clock at Night, the Conclusion of that Affair was put off till the next Morning, (*May 3d.*) when the House of Peers being sat, the *Bill to inflict Pains and Penalties on George Kelly, alias Johnson*, was read the 3d. Time. Hereupon the Lord BATHURST offer’d a Rider to be added to the said Bill, which was read by the Clerk as follows; viz.

‘ Provided always, that if the said *George Kelly*  
 ‘ alias *Johnson*, shall, at any time, give Security  
 ‘ such as shall be approved of by the Two Chief  
 ‘ Justices, That he will, within one Month, depart  
 ‘ his Majesty’s Dominions, and not return again  
 ‘ without the Licence of His Majesty, his Heirs  
 ‘ and Successors, Then the said *George Kelly*, alias  
 ‘ *Johnson*, shall be at Liberty to depart, any Thing  
 ‘ in this Act to the contrary notwithstanding.

And a Motion being made and the Question put, whether the said *Rider* should be read a second time, it was carried in the Negative by 83 Voices against 38; upon which the following Peers entered their DISSENT viz.

|                           |            |                   |
|---------------------------|------------|-------------------|
| Osborn                    | Strafford  | Foley             |
| Anglesey                  | Aylesford  | Exeter            |
| Craven                    | Salisbury  | Berkeley de Str.  |
| Guilford                  | Poulet     | Compton           |
| Stawell                   | Bruce      | Uxbridge          |
| Northampton               | Ashburnham | Arundel           |
| Middleton                 | Dartmouth  | Cardigan          |
| Gower                     | Masham     | Montjoy           |
| Fr. Cestrien <sup>s</sup> | Weston     | Willoughby de Br. |
| Scarsdale                 | Hay        | Bingley.          |
| Trevor                    | Brook      |                   |
| Bathurst                  | Litchfield |                   |

Then the Question was put, whether this Bill should pass? Which being carried in the Affirmative by 79 Voices against 41, several Lords enter'd and signed the following Protestation, *viz.*

*Dissentient<sup>s</sup>*

1. Because we think there is no Room for the Legislature to pass a Law *Ex post Facto*, to punish this Person for the treasonable Correspondence he is accused of, he being in Custody and may be brought to a legal Tryal in one of the Courts of Justice.

2. We conceive the Want or Defect of such clear and plain Evidence as by the Laws of this Kingdom is required to convict any Person of *High Treason*, no sufficient Reason to warrant the Exercise of the Legislative Power in making a new Law for his Punishment, because such Laws being made for the Protection of Innocent Persons, from suffering by false, uncertain, or doubtful Evidence, every Subject is intitled to the Benefit of those Laws, when he shall fall under an Accusation of *High Treason*.

3. Because we conceive by the Rules of natural Justice, Laws ought to be first made as Directions for Men's Actions, and Obedience, and Punishment inflicted, for putting those Laws in Execution a-



gainst Offenders : And that therefore punishing by a Law made after the Offence committed, is not agreeable to Reason or Justice, except only in the Case of real and apparent Necessity, to prevent the immediate Ruin of a Government, which we do not think can be the present Case, or can bear any Resemblance to it.

4. Because the Proceedings of the Legislative Power, in making Laws, can be governed by no Rule but that of their own Discretion and Pleasure : And therefore the making Laws, to inflict Pains and Penalties on particular Persons, must, as we conceive, tend to expose the Liberties and Properties of the Subjects to an arbitrary Discretion ; and consequently render them precarious in the Enjoyment of those Blessings, which by our excellent Constitution and Government, they have always had an uncontrollable Right to hold and enjoy, till forfeited for some Crime, and the Person offending legally convicted thereof, upon such full and positive Proof as the Laws of this Kingdom do require.

5. Because as we conceive, it would be of dangerous Consequence to the Safety of innocent Persons, to allow Copies of Letters taken by the Clerks of the Post-Office, tho' sworn by them to be true Copies, to be given in Evidence against any Person accused of *High Treason*, especially when such Copies are not compared with the Originals after they are taken, and the Originals forwarded on by them, and not produced ; because, the Originals not being produced, such Person is deprived of an Opportunity of falsifying those Copies, and tho' there should be any Mistake committed by the Clerk in Copying, whether Wilfully, or by Negligence, such Mistake cannot be detected for want of the Original Writings to compare the Copies with.

6. Because

6. Because the Proof of Letters or other Writing in criminal Prosecutions by Similitude and Comparison of Hands, being, as we conceive, a very slight and weak Evidence (because hands may be too easily counterfeited, and the Persons examined cannot speak positively, but to their Belief, and therefore not liable to be prosecuted for Perjury;) hath, as we conceive very justly been discouraged in such Times when the Administration of Justice hath been most Impartial; and Convictions of High Treason grounded on such Evidence have been reversed by Act of Parliament for that and other Reasons.

|                      |                        |                          |
|----------------------|------------------------|--------------------------|
| <i>Pomfret</i>       | <i>Aylesford</i>       | <i>Trevor</i>            |
| <i>Stamell</i>       | <i>Dartmouth</i>       | <i>Uxbridge</i>          |
| <i>Northampton</i>   | <i>Bathurst</i>        | <i>Foley</i>             |
| <i>Fr. Cestrien'</i> | <i>Litchfield</i>      | <i>Masham</i>            |
| <i>Anglesey</i>      | <i>Salisbury</i>       | <i>Cardigan</i>          |
| <i>Strafford</i>     | <i>Brook</i>           | <i>Arundel</i>           |
| <i>Scarsdale</i>     | <i>Gower</i>           | <i>Exeter</i>            |
| <i>Craven</i>        | <i>Weston</i>          | <i>Montjoy</i>           |
| <i>Denbigh</i>       | <i>Osborn</i>          | <i>Willoughby de Br.</i> |
| <i>Guilford</i>      | <i>Hay</i>             | <i>Ashburnham</i>        |
| <i>Wharton</i>       | <i>Berkley de Str.</i> | <i>Bingley</i>           |
| <i>Middleton</i>     | <i>Compton</i>         | <i>Tadcaster.</i>        |
| <i>Poulet</i>        | <i>Bruce</i>           |                          |

On *Monday*, the 6th of *May*, about Eleven a Clock in the Morning, the Lord † Bishop of *Rocheſter*, was brought to the Bar of the Lords House, in order to make his Defence againſt the *Bill to inflict certain Pains and Penalties upon him*, with the Aſſiſtance of his Council Sir *Conſtantine Phipps*, and Mr. *Wynne*. After the Reading of the Bill, the King's

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Council

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† The Bishop of Rocheſter's Tryal at the Bar of the Lords Houſe.

Council open'd the Nature of it, display'd the Heinousness of the late horrid and execrable Conspiracy, and, in particular, aggravated the Crime of the Prisoner at the Bar, who as the Preamble suggested, *was principally concern'd in forming, directing, and carrying on the said wicked, and detestable Plot.* This done in order to prove the Conspiracy, in general, they offer'd to read several Extracts of Letters, which the Government had receiv'd from Abroad; But this was oppos'd by the Bishop and his Council, who alledged, That Extracts of Letters, some of them from anonymous, or at least, from unknown Persons, ought not to be admitted as Evidence, and that according to the Method of legal Proceedings, the Originals themselves ought to be produced. After the Council, on both sides, had canvass'd that Matter to and fro, they and the Prisoner were order'd to withdraw, and then a Motion was made, and the Question put, ' That the ' Extract offer'd by the Council for the Bill of the ' Letter from Sir *Luke Schaub* to the Lord *Carteret* ' be read as Evidence,' which being carried in the Affirmative by 95 Voices against 37, another Motion was made and the Question put, ' Whether ' the Advice inclosed in the Letter from Sir *Luke Schaub* be read, tho' this House be not acquainted ' with the Person who gave that Advice ?

This Question being also resolv'd in the Affirmative, the following Lords enter'd their Dissent, viz

|                    |                     |                   |
|--------------------|---------------------|-------------------|
| <i>Strafford</i>   | <i>Gower</i>        | <i>Litchfield</i> |
| <i>Osborn</i>      | <i>Poulet</i>       | <i>Bruce</i>      |
| <i>Craven</i>      | <i>Fr. Cestrien</i> | <i>Denbigh</i>    |
| <i>Salisbury</i>   | <i>Masham</i>       | <i>Guilford</i>   |
| <i>Northampton</i> | <i>Anglesey</i>     | <i>Dartmouth</i>  |
| <i>Scarsdale</i>   | <i>Cowper</i>       | <i>Trevor</i>     |
| <i>Aylesford</i>   | <i>Brook</i>        | <i>Foley</i>      |

*Exet*

Exeter  
Montjoy  
Weston

Willoughby de Br.  
Compton  
Cardigan

Bingley

Ashburnham.

Then the Council for the Bill offer'd to produce Copies of Letters intercepted at the Post-Office, Part of them written in Cypher, and afterwards decypher'd, But the same was strenuously opposed by the Bishop and his Council, who put several puzzling Questions to Mr. *Willes* one of the Decyphers, about the Nature, and Certainty of their Art. This Disquisition lasted till about Nine of the Clock in the Evening, when the Prisoner and the Council on both sides being withdrawn, a Motion was made and the Question put, that *Willes* be obliged to produce this Key of the Cypher? This Question being resolv'd in the Negative by 80 Voices against 43, another Motion was made and the Question put, That the said Letters intercepted at the Post-Office and decypher'd, be read as Evidence, which was carried in the Affirmative, and then the further Hearing of that Affair was put off to the next Day, and the Bishop remanded to the *Tower*.

The next Morning, (*Tuesday, May 7th*) he was brought again to the Bar of the Lords House, where the Council for the Bill, going on with their Evidence, offer'd to read the Examinations and Confessions of *Philip Neynoe*, deceased. Which was strongly opposed by the Bishop and his Council, but most of their Objections having already been overruled in the Cases of *Plunket* and *Kelly*, and the Lord Viscount *Townshend* having affirm'd, and Mr. *Robert Walpole* attested the said Examinations, it was resolv'd, by a Majority of 85 Voices against 41, That they should be admitted as Evidence; upon which the said Examinations were read. Then the Council for the Bill offer'd to read several Letters intercepted at the Post-Office:

Upon



Upon which the Bishop desired and insisted, That the Clerks of the Post-Office be examin'd, to these Two Questions, ' *First*, Whether they had a sufficient Warrant and Authority, to stop and open the said Letters, and from whom they had such Warrant and Authority? *2dly*, Whether the Clerks of the Post-Office who copied the Letters, whose Originals had been forwarded, had intercepted the said Letters, themselves, or receiv'd them from some Body else? The Bishop and the Council on both sides being withdrawn, the Courtiers put the following Question, viz.

' That it is the Opinion of this House, that it is inconsistent with the publick Safety, as well as unnecessary for the Prisoner's Defence, to suffer any further Inquiry to be made, upon this occasion, into the Warrants which have been granted by the Secretary of State for the Stopping and Opening of Letters which should come or go by the Post, or into the Methods that have been taken by the proper Officers at the Post-Office, in obedience to such Warrants?

After a long Debate, that lasted near Eleven of the Clock at Night, the said Question was carried in the Affirmative, by a Majority of 82 Voices against 40, upon which several Lords enter'd the following Protestation, viz.

*Dissentient*

1. Because we apprehend, that, in all criminal Prosecutions, the Cross-examining of Witnesses is necessary for the Defence of the Prisoner, and for the Satisfaction of those who are to judge of the Facts alledged against him, in order to the discovering of Truth, and detecting any fraudulent Evidence which should be offer'd; and the Resolution above recited does, in our Opinions, debar the Bishop of *Rocheſter*, and every other Person concerned, from asking any

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Questions of the Clerks of the Post-Office, who are brought as Witnesses to the Bar, relating to the stopping and opening of Post-Letters, tho' Letters pretended to be stoppt and opened at the Post-Office are read as Evidence against the Prisoner. And we conceive, that the preventing any further Enquiry on these Heads, must lay this House under great Difficulties, when they come to form a Judgment on those Letters, the Validity of which will, in a great measure, depend on the Proof given of their having been truly stoppt and opened, as asserted.

2. We apprehend it to be impossible for this House to determine, that the Enquiry which is desired is unnecessary to the Defence of the Prisoner, till he shall come to make his Application; and we conceive he should have Liberty of asking what Questions he or his Council think proper, of the Clerks of the Post-Office, relating to the stopping and opening of Letters, without acquainting the House what Use he intends to make of their Answers: And this appears to us to be highly reasonable, essential to Justice, and warranted by the Methods which this House hath hitherto allowed the Council for the Support of the Bill to proceed in, who have, during the whole Course of this Examination, reserved the Application of the Evidence they have offer'd, till they should judge convenient to make it.

|                  |                          |                   |
|------------------|--------------------------|-------------------|
| <i>Scarsdale</i> | <i>Wharton</i>           | <i>Masbam</i>     |
| <i>Trevor</i>    | <i>Craven</i>            | <i>Aylesford</i>  |
| <i>Compton</i>   | <i>Northampton</i>       | <i>Bathurst</i>   |
| <i>Weston</i>    | <i>Bingley</i>           | <i>Litchfield</i> |
| <i>Uxbridge</i>  | <i>Willoughby de Br.</i> | <i>Osborn</i>     |
| <i>Gower</i>     | <i>Exeter</i>            | <i>Bruce</i>      |
| <i>Strafford</i> | <i>Ashburnham</i>        | <i>Cardigan</i>   |
| <i>Foley</i>     | <i>Hay</i>               | <i>Anglesey.</i>  |
| <i>Pomfret</i>   | <i>Denbigh</i>           |                   |
| <i>Brook</i>     | <i>Poulet</i>            |                   |

The Next Morning (*Wednesday May 8th.*) the Bishop of *Rocheſter* being brought again to the Bar of the Lords Houſe, the Council for the Bill went on with the reſt of their Evidence, with leſs Interruption than the two preceding Days. The moſt remarkable Paſſage in this Day's Proceeding was, that *William Wood*, late Coachman to the Biſhop, being produced as a Witneſs, that the Prelate aſk'd him, ' what Reward he had receiv'd, or been promiſed, ' to depoſe againſt his Maſter ? ' Which being re- preſented as a Brow-beating of the King's Evidence, the Lord Chancellor rebuked the Priſoner for it. The Council for the Bill having ſumm'd up their Evidence, about Four a-clock in the Afternoon, the Lords adjourn'd to the next Day.

Accordingly on *Thursday*, the 9th of *May*, the Houſe of Peers being ſat, and the Biſhop brought to their Bar, his Council made Remarks and Obſervations on the Evidence produced on the other Side, and open'd the Evidence they had to offer, in Defence of their Client. Their chief Buſineſs being to invalidate *Neynoe's* Examinations, on which great Streſs was laid by the Council for the Bill, they obſerv'd, ' That what he pretended to know of the ' Biſhop of *Rocheſter* was only by *Hearſay* from Mr ' *George Kelly* : But that as *Hearſay* was never ' admitted as legal Proof, much leſs ought it to ' have any Weight in this Caſe, where a Dead-Man's ' *Neynoe's*, *Hearſay* was denied, and contradicted by ' *Kelly* now alive. That *Neynoe's* Examinations were ' neither Sworn to, nor ſigned by him : But were by ' ſtill living, and offer'd to confirm them by Oath ' they could hardly be of any Force, ſince they were ' ready to prove, That he was drawn in to ſay any ' unſay, to affirm or deny, any Thing.' To this Purpoſe, they offer'd to examine three Witneſſes viz. Mr. *Bingley*, Mr. *Skeene*, and Mr. *Stewart*, who

were in the Custody of a State-Messenger at the same time with *Neynoe*, and had an Opportunity to converse, or communicate together ; but before they enter'd upon that Examination, the Bishop taking Notice, That Mr. *Chancellor of the Exchequer* was at the Bar, he said, ' It was not proper he should hear Positions that affected him.' Whereupon Mr. WALPOLE withdrew.

Mr. *Bingley* being sworn, related, what he knew concerning *Philip Neynoe*, with whom he had a great Intimacy, and was stopt with him at *Deal*, as they endeavour'd to go over into *France*. Particularly, That *Neynoe* having been taken up, some time before, upon Account of several scurrilous Libels he had writ against the Government, and publish'd in the *Free-Holder's Journal*, and being under an Apprehension of being treated with the utmost Severity of the Law, on the one hand, and tempted with large Promises of Reward, on the other, he consented to be employ'd by the Ministers and to accuse the Earl of ORRERY, the Bishop of *Rocheſter*, and several other innocent Persons of having form'd a Conspiracy against the Government ; That the Lord T—d had declared a Prejudice, upon some private Account to the Bishop, and was resolv'd to pull down the Pride of that HAUGHTY PRELATE. That Mr. WALPOLE instructed him (*Neynoe*) in private, what he should say in his Examinations before the Lords of the Council, and, at divers times, gave him great Sums of Money. That *Neynoe*, who all this while had nothing in View, but to impose on those who obliged him to act so villainous a Part, and to get out of their Reach, propos'd to the Ministers his going over to *France*, in order to gain further Intelligence of the Conspiracy, by narrowly observing the Steps of the Earl MARR, Lord LANSDOWNE and other

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Persons



‘ Persons, suspected of being Agents for the Pretender in *France* ; That Mr. WALPOLE seem’d, at first, to approve this Overture, but whatever was the Reason, he afterwards chang’d his Opinion, and suspecting *Neynoe*’s true Intention to cheat him, and give him the Slip, he caus’d him to be watch’d, and stopp’d at *Deal*.

This Deponent (Mr. *Bingley*) added, ‘ That he himself had been tamper’d with, and offer’d a Reward of 300 *l.* if he would turn Evidence against the Bishop of *Rocheſter*, which he refused to do.

The Lord Viscount TOWNSHEND, who, as well as the Chancellor of the *Exchequer*, was charg’d by this Deposition, in his own Vindication observed, That no Regard ought to be had to the Evidence of a Notorious and Zealous *Jacobite*, who had been convicted, Whipt, Pillory’d, and Imprison’d at *Dublin*, upon two Indictments, one for publishing a treasonable Book call’d *NERO*, the other for Speaking treasonable Words, and this after having taken the Oaths to the Government ; All which make him a less credible Witness in the present Case, than if he had, in a Common Trial been proved a *Perjured Witness*.

Whatever Weight was laid on this Objection Mr. *Skeene* confirm’d, upon Oath, a great part of Mr. *Bingley*’s Deposition, adding, ‘ That *Neynoe* pursuant to his Instructions, from the Ministers who employ’d him, had propos’d to him to turn Evidence against the Lord ORRERY, and the Bishop of *Rocheſter* : But that having reject’d his Proposal he confess’d to him and to Mr. *Stewart* ; that all he had done was only to amuse the Ministers till he could get out of their Power ; But that he had rather be Torn in Pieces by wild Horses, than be an Evidence, and con-

firm by Oath before a Court of Judicature, what he had been obliged to say before the Lords of the Council; That being one Day, in private with the Minister above-mention'd, he was struck with such Remorse and Indignation at the infamous Part he forc'd him to act, that he was upon the Point of Seizing on a Sword that lay on the Table, and running him through, in order to put an end to the Conspiracy. And that this Deponent having ask'd *Neynoe*, whether he knew any Thing of a Plot? He answer'd, He knew of Two, one of Mr. WALPOLE's against some great Men, the other of his own, which was only to get eighteen or twenty Thousand Pounds from Mr. WALPOLE: And whatever became of the first, he doubted not but he would have brought the other to bear, had he but once set Foot on the *French* shore; and had not *Bingley's* Blundering marr'd all. Moreover, Mr. *Skeene* endeavour'd wholly to destroy Captain *Pancier's* Deposition, by saying, That he never told him any Thing, but what he had himself out of the publick News-Papers.

Mr. *Steward* being also examin'd, upon Oath confirm'd what had been deposed by Mr. *Bingley* and Mr. *Skeene*, adding, ' That *Neynoe* had endeavour'd to engage him to turn Evidence against the Earl of ORRERY: Which he refused to do, having never spoke but once with his Lordship, to whom he was introduced by a Gentleman, upon occasion of some Books which he was to get for him.

Most of these Particulars were confirm'd by *Robert Kynaston Esq;* who deposed, that he had them from Mr. *Bingley*, Mr. *Skeene*, or Mr. *Stewart*, before Mr. *Neynoe* was drown'd: But little Stress was laid by the Majority of the House of Peers, on

these Depositions, the three first Witnesses being known to have been deeply engaged in the *Pretender's* Cause.

This being over, the Council for the Bishop labour'd to clear him from the most material Part of the Charge against him, viz *That he did dictate to Mr. George Kelly the three Letters, dated April 20th. 1722, to General Dillon, the late Earl Marry, and the Pretender; Suggesting, ' That it could not be possible he should, at that time, dictate those Letters, being disabled in his Chamber, and constantly attended by some of his Servants, who were examin'd, and deposed, That no Stranger came near him about that Time, and for some time, before and after; and that they never knew of Mr. Kelly's being the Bishop's Secretary or being intimate with him, which, had he been so, could not have escaped their Knowledge* The Council for the Bishop, read also an Affidavit from Mr. Gordon Banker at *Bologne*, importing ' That he never receiv'd, nor forwarded any Packets, from Mr. George Kelly, nor ever had any Dealings or Correspondence with him'; and the likewise examin'd Witnesses; and among the rest *Erasmus Lewis Esq;* to prove how easily Hand writing may be counterfeited.

These Examinations having lasted till near Eleven of the Clock in the Evening, the Lords adjourn'd to the next Morning. It is observable that as the Bishop was going back to the *Tower*, there happen'd a small Conflict between the *Tory* and *Whigg* Mobbs, which was soon quell'd by the Guards that attended the Prisoner.

Being the next Morning (*Friday May 10*) brought again to the Bar of the Lords House, the Council endeavour'd to take off the Weight of the Testimony and Judgement of Mr. R—— an Ing

ver, who having been produced and examin'd by the Council for the Bill, had sworn to the Similitude of the Seal of a Letter found among the Bishop's Papers, with the Seals of some of the intercepted Letters: In opposition to which Mr. *Johnson*, and some other eminent Ingravers gave their Opinions upon Oath, ' That a Seal may as easily be counterfeited as Writing, or which is the same, That a Seal ingraved from the Impression of another Seal may be so perfect, as to render it Impossible to distinguish the Impression of the Original, from that of the Counterfeit': An Experiment of which was made by a Lord, who produced Impressions of Two different Seals, so exactly like one another, that one of the Ingravers was deceiv'd by them, and judg'd them to be of one, and the same Seal. This Affair occasion'd great Alterations between the Council on both Sides, and warm Debates afterwards, in the House, till Four a-Clock in the Afternoon, when the Lords having adjourn'd during Pleasure, the Courtiers refresh'd themselves in the *Prince's* Chamber, and the others in the adjacent Coffee-Houses.

The House being resumed, the Bishop of *Roche-ster* examined Witneses to falsify the Deposition of *John Lawson*, Baker at *Bromley*, (inserted in the *Appendix* to the Report of the House of Commons) who, very critically, swore to all the Days and times the Bishop went to and from *London* and *Bromley* from the 1st. of *April* to the 20th of *August* 1722. And further deposed, ' That he was told by *James Day* and *Thomas Farnden*, Two Servants of the Bishop, that he had a Fit of the Gout, which lasted all or most part of the time between his going to *Bromley*, next before his Lady's Death, and his coming to Town after she was buried; and that the said *Thomas Farnden*, Also told



' told him, that among those who frequented the  
 ' said Bishop at *Bromley* last Summer, were the Lord  
 ' NORTH and GREY, who came very often, the  
 ' Lord BATHURST, Sir CONSTANTINE PHIPPS, Mr.  
 ' ALDRIDGE a Clergyman, and Mr. WYNNE, a  
 ' Counsellor at Law'. Among the rest, the Helper  
 to *William Wood*, the Bishop's late Coachman, ' de-  
 ' posed, that he had been kept in close Custody  
 ' for above Two Months, he knew not for what  
 ' ——— Being ask'd if ever he saw Mr. *Kelly* alias  
 ' *Johnson*, at the Bishop's House in Town, or at  
 ' *Bromley*, he answer'd in the Negative: Adding,  
 ' That if he had been there, he could not have  
 ' miss'd seeing, or hearing of him, because he al-  
 ' ways was about the House and Stables, and as he  
 ' conversed with all the other Servants, so he knew  
 ' of all the Comers and Goers. And that when he  
 ' was at *Bromley* one *Lawson*, a Baker, came to him,  
 ' and offer'd him a Reward of Two Hundred  
 ' Pounds, (one Half in Hand) if he would turn Evi-  
 ' dence against the Bishop, and swear that Mr. *Kelly*,  
 ' Lord NORTH and GREY, and some other Lords  
 ' and Gentlemen whom he should Name to him, of-  
 ' ten came to the Bishop's House at *Bromley*: Which  
 ' Proposal he rejected, with Scorn'. This was partly  
 confirm'd by two or three more of the Bishop's Ser-  
 vants, and other Witnesses, whose Examinations  
 having lasted till Nine of the Clock in the Eve-  
 ning the Lords adjourn'd to the next Day.

On *Saturday* the 11th of *May*, the Bp. being again  
 brought to the Bar of their Lordships House, Sir *Con-*  
*stantine Phipps* made a short, but pithy, Recapitulation  
 of the Evidence for his Client, which was more fully  
 enlarg'd upon by Mr. *Wynne*, who, at the same time,  
 made some nice Observations on the Evidence given  
 for the Bill: Which being over exactly at Two  
 of the Clock in the Afternoon, the Bishop then  
 spoke in his own Defence, to the Effect following.

My

My LORDS,

I Have been under a very long and close Confinement, and have been treated with such Severity, and so great Indignity, as I believe no Prisoner in the *Tower* of my Age, and Function, and Rank, ever was. By which Means, what Strength and Use of my Limbs I had when I was first committed in *August* last, is now so far declined, that I am very unfit to make my Defence against a Bill of such an extraordinary nature.

The great Weakness of Body and Mind under which I labour, such Usage, such Hardships, such Insults, as I have undergone, might have broken a more resolute Spirit and much stronger Constitution than falls to my Share.

Your Lordships were pleased to permit me to appear before the House of Commons, if I thought fit, lest my Silence should be turned to my Disadvantage, as, in fact, the Council for the Bill have done their utmost towards it.

I should not have thought to decline any Occasion of justifying myself; but I crave leave to tell your Lordships some Reasons why I did not appear there, and make use of the Leave your Lordships gave me.

After seven Months of close Imprisonment, I was not a little surprized when I heard, that on the 11th of *March*, by the House of Commons, it was thus resolved, " That it appears to this House, that *Francis*, Lord Bishop of *Rocheſter*, was principally concerned in forming, directing, and carrying on a detestable Conspiracy, &c".

Upon duly weighing which Resolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was fully contain'd and previously resolved in this Vote; and therefore whatsoever should have been offered on my behalf to that House,

House, would have been an exprefs Contradiction to it. And what Hopes I could have of Success in such an Attempt, I need not say ; what they sent me was the Preamble of the Bill only, which they could not alter, consistent with what they had resolved.

The Bill itself was to inflict Pains and Penalties, which followed ; but there was no room to object against any of those which they had not then declared ; they have since been added, and sent up to your Lordships in like manner, without any Oath made, or any criminal Act proved against me by any living Witness. And is a Person, thus sentenced below, to be deprived of all his Preferments, and his very Function, and to be a perpetual Exile, and to be render'd incapable of any Office and Employment ? To be one whom no Man must correspond with by Letters, Messages, or otherwise ? And, my Lords, one who is a Bishop of the Church of *England*, and a Lord of Parliament ?

It is the first Instance wherein a Member of this House hath been so treated and prejudged, and (as I have once before said to your Lordships) I pray God it may be the last, and that such Precedents in this Kingdom may not be multiplied in After Times.

My Council have amply done their part, by arguing the Points of Law, by explaining and enforcing the Evidence, and shewing the little Colour Appearance and Shadow of Proofs against me (permit me to call them so) by answering what hath been offer'd against me, and by setting out the Consequence which such a Bill, founded and carry'd on in such a manner, and which enacts such severe Penalties, must and will be attended with.

Yet it becomes me to say something for myself lest my Silence be construed Consciousness of Guilt

Guilt, or, at least, an Unwillingness to enter into Matters of so dark and perplex'd, so nice and tender a Nature, as if I was not able, or did not care to clear and explain myself, and rather chose to leave it to the Management of others : I thank God, I am under no such Restraint, and can speak to your Lordships on this Subject with great freedom and plainness.

But before I proceed, I beg leave that I may represent to your Lordships some particular Hardships under which I have laboured :

The first is reading Extracts of anonymous Letters, without suffering any other parts of the same Letters, tho' relating to the same Subject, to be read. — Another is, — Excusing the Decyphers from answering Questions asked by me, and which I thought necessary for my Defence, least they should reveal their Art. — The next is, not suffering me to be answered by the Clerks of the Post-Office, least the Secrets of that Office should be discovered. Another was, not suffering a Person, who had been at least ten Years out of the Secretary's Office, to answer any Questions, which came to his knowledge by being some Years in that Office.

Another is, reading Examinations neither dated, signed, nor sworn to.

Another is, reading Letters supposed to be criminal, writ in another Man's Hand, and supposed to be dictated by me, without offering any Proof, that I either dictated them, or was privy to them.

Another, is not allowing me Copies of the Decyphered Letters, tho' petitioned for, till the Tryal was so far advanced, and I so employed and weakened by it, that I had not sufficient time to consider them. Another is, not allowing me to read out of the Collection of Papers before the House any part



of them, in order to discharge myself, but what hath been read by Clerks.— And all this in a Proceeding where the Council for the Bill profess they have no legal Evidence, and that they are not to be confined to the Rules of any Court of Law or Equity, tho' as often as it is for their Service, they constantly shelter themselves under it.

My Lords, these are the Hardships which I previously mention, and humbly lay before your Lordships.

By your Lordships Leave, I proceed now to make that Defence, as well as I am able to make it in the Condition of Health I am now in, humbly praying your Lordships, if I find myself in any degree sinking under it, that you will indulge me and allow me a little time to go on.

The general Charge of the Bill is, That I have been deeply concerned in forming, directing, and carrying on a wicked and detestable Conspiracy, and was a principal Actor therein.

The Charge is divided into two Heads :

First, That I traitorously consulted and corresponded with divers Persons, to raise an Insurrection, &c. in this Kingdom, to procure Foreign Forces to invade it, &c.

Secondly, That I traitorously corresponded with the same intent with Persons employed, &c. But neither part of this Charge hath been made good by the Counsel for the Bill, nor have they proved nor attempted to prove me at one Consultation. Nor is there any thing tends towards such a Proof except the exploded Story of the *Burford Cluic* and two or three Hear-say Informations which were mentioned of my Lord STRAFFORD, Lord NORTH and GREY, Lord ORRERY, and Sir HENRY GOSRING, said to be concerned in the Management of this Affair. I have met all these Lords I own

what but at different times ; and upon the best Recolle-  
 s in a ction I can make, I never was in all my Life with any  
 rofess three of them at once, unless perhaps about some  
 y are general Matters depending in Parliament. The  
 art of Earl of STRAFFORD hath visited me, and I have,  
 their when in Health, dined with him once at his House.  
 der it At my Lord NORTH's Table I have not eat : Tho'  
 I pre-I have great Honour for him, yet I never had any  
 Lord intimacy with him, especially since the Affair of  
 the Dormitory, wherein he appeared so against me,  
 make that I certainly had lost the Cause, had not his Af-  
 e it in fairs call'd him to *Holland*.

umbl Lawson hath sworn, that this Lord did often vi-  
 n an sit me at *Bromley*, but in truth he never was there  
 ge me above twice or thrice in all his life-time.

I have not been once these two Years with Lord  
 I hav ORRERY on any Business whatsoever ; we twice  
 ng, and dined together at the House of a Person, whose  
 piracy Name if I should mention, your Lordships would  
 not think there was any harm at all in dining there.

Sir HENRY GORING I never saw in all my Life,  
 corre till he saw me at *St. James's*, and he was but once  
 nsurrat *Bromley* ; and the Occasion of his coming to me,  
 Foreign was his placing four Sons at *Westminster-School*,  
 and intending to breed up some of them to the  
 ed wi Gospel : The last time I saw Sir HARRY GORING,  
 c. B was about twelve Months ago, when I promised to  
 le gooring down one of his Sons to be upon the Foun-  
 provedation ; and I, shall be sorry if I can't be as good  
 tations my Word.

a Proo Your Lordships will excuse me for being so par-  
 d Clucular, when you consider how dangerous the  
 ich we Charge is, and how fit it is to clear the Persons  
 NORTH charged, from such mischievous Correspondence ;  
 RY G especially since it is with these, and these only, that  
 ment have been speaking of, and it is insinuated that  
 own I have

I have held Consultations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy, without a Consultation. But how hath that too been made Good ? Your Lordships will observe, that there is not one Overt-Act, or Circumstance of Time or Place, mentioned, proved, or alledged. I have not therefore consulted or conspired at Home.

The next, and the only material Part of the Charge, is, corresponding abroad with the Pretender, &c.

A high and heinous Accusation, strongly asserted, much insisted upon, but how maintained, is the Question ?

The true State of this part of my Charge, as well and as fully as I can recollect, is this, (I will not in any degree dissemble before you :) 1<sup>st</sup>, That I did the 20<sup>th</sup> of *April*, 1722. dictate three Letters to Mr DILLON, the late Lord MARR, and to the PRETENDER himself, under the feigned Names of *Chivers*, *Musgrave*, and *Jackson*; to which Letters the Names of *Jones*, *Illington*, and 1378, were, by my Direction, subscribed.

Secondly, That afterwards two Letters in answer to these two sent to MARR and DILLON, one dated *May* the 11<sup>th</sup> and the other *July* the 25<sup>th</sup>, under the feigned Names of *Motfield* and *Digby*, were intercepted.

Thirdly, That there is certain intercepted Correspondence between the Pretender's Agents abroad and *Kelly* here, carry'd on by him, and that I was the Head of it, and am answerable for what it contains.

This is the Substance of my Charge, all other particular Circumstances are made use of, as the  
though

the thought would give Light and Strength to one or other of those Articles.

As to the first of these Points, *that I did dictate these Letters.*

That it could not be possible that I dictated these Letters, hath been made out to your Lordships by such a Concurrence of Evidence, so clear, so full, and legal, as I persuade myself can have left no Doubt remaining upon any candid and indifferent Person; a plain Matter of Fact, supported by such Testimony, cannot be overthrown by little GuesSES and consequential Surmises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Case, that peculiar Circumstances attend it as to the point of Time. My being disabled in my Chamber, and attended before and after that time by some of my Servants, and receiving frequent Messages from others: The agreeing Testimony of my Servants, that no Stranger came near me about that time, and for some time before and after, and the full Evidence of the School at *Westminster*, hath enabled my several Servants to recollect the Time, and to furnish such a Proof of my Innocence in this matter, as is not to be mistaken, and shews the Clearness of the Impossibility of it.

The Clerks of the Post-Office swear, they believe these three Letters to have been in the Hand-writing of Mr. *Kelly*, my supposed Amanuensis: Your Lordships will remember, that their Oaths were at four Months distance from the time of seeing those Letters; during the whole Series of which time, it never hath appeared that they have compared one Original with another, and the only Original, as a Specimen, hath been proved, at your Lordships Bar, not to be the Hand-writing of



of Mr. *Kelly* ; and be pleased to remember, the very Supposition of Mr. *Kelly*'s being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, who then writ these Letters, and with what View were they writ ? The Answer to this is obvious : My being here at your Lordships Bar sufficiently explains it. It is enough to prove that I did not write or dictate them, and I have proved it abundantly. Let but any momentous Part of the Charge against me be made out with half the Evidence, and I will submit without any Dispute. Eight or nine such Witnesses would have born down the Evidence of one or two that had Sworn : But where there is none on the one Side, but all on the other Side who appear, and that give direct positive Evidence, can your Lordships deliberate a moment for the Reason of giving your Judgment, which in doubtful Cases ought always to lean to the doubtful Side ? And so taking this Point as it stands, there is an End of the whole matter, for all other Insinuations, feigned Names, and obscure Passages in Letters, depending upon this, must fall together.

As to the other Part of the Accusation, when it is said the Letter to *Jackson* was a Letter to the Pretender, I have nothing to do with it ; he that writ the Letter, when known, will best be able, and most concerned, to disprove it.

Since this Objection carries a very odd Sound, I shall briefly shew your Lordships how that stands : *Jackson*, in a Cypher of *Plunket*'s, is said to denote the Pretender ; That Cypher consists of one hundred and fifty Names, of which not one is used in any of the Letters attributed to Mr. *Kelly* ; Three or four of these Names are used by Persons supposed to have writ to Mr. *Kelly* from Abroad, but not one of them is used by him ; nor doth *Jack-*

*son*

son ever, in his part of the Correspondence, stand for the Pretender, but he is always under other Appellations: Nay, *Plunket* himself, in all his Letters writ in decyphered Names, never styles the Pretender *Jackson*, but either *Joseph* or *Jepson*.—Why should a Name, used in *Kelly's* Correspondence, be explained by *Plunket's* Cypher, when *Kelly* appears to be no ways acquainted with him, and *Plunket* himself did never dictate to him? I forbear Repetition; I only add, that at this Rate, there is nothing that may not be proved.

The Letter to *Dubois* there is little said of, because there is no use made of it; it is charged in the Report as a Letter which I had received from abroad. The Tables are now turned, and I myself designed to have sent this Letter to a feigned Correspondent, but keep it among my Papers under my Seal: For what end? the Letter itself is an errant Delusion; Why, to furnish Proof, which is much wanted, of my receiving Letters that were directed *Jones* and *Illington*; and it is very strange, that I, who am represented as being so very cautious, should be so negligent in this, and preserve something that is of no use, and yet might hurt me so much, when discover'd.

It is absurd to think, that I should by that means mention the Name of my Correspondent, and mention the Name of *Johnson*, which the Committee of the Lower House, observe was constantly with me.

I know not what farther can be said for this Matter, till the Council have further explain'd it, and shew'd what use they make of this Letter, which hath given your Lordships so much Trouble, and which I own I do not comprehend.

There is still a fifth Letter, which I have acknowledged to be my Hand; that which was taken on  
*son* my

my Servant. Mr. *Reeves* hath made some uncharitable Observations upon it, which, for ought I know, may be allow'd as the Form of Law in the Ordinary Courts; but, I am sure, in a Court of Equity, the most favourable Construction ought to take Place. I have taken Minutes of his Observations, and I think they are these: He observes that the Bishop doth not in his Letter insist on his Innocence in general, but considers only what Evidence doth affect him.

It comes out, at last, for whom my Letter was designed, and I think That an Answer to Mr. *Reeves's* first Observation, and I shall explain it no further. He observes next, tho' I clear myself from the Knowledge of *Layer, Neynoe, &c.* there I say nothing of *Kelly*.

The Gentleman I designed the Letter for, knows it was in answer to one wrote to me about *Layer*, and will swear it himself, if there was room for it.

The third Observation is, where speaking of myself, I say, 'If I cannot ward the Blow, I must be a Prisoner some Years without Remedy;' from which he is pleas'd to infer, not in that good natur'd way he generally did, my Meaning must be, that I was conscious of Guilt.

I apprehended an Impeachment would have been lodged and never prosecuted, as in the Case of my Lord *Danby* and the Earl of *Oxford*, and then I should have lain without Tryal, and without Bread.

The second Article of my Charge, is the two Letters from *Mar* and *Dillon*, under the feigned Names of *Motfield* and *Digby*, which were intercepted.

One of these they have dropt.

That I received them, is not pretended; both Letters, tho' without a criminal Expression or Word

Word of Business in either of them, would yet have affected me in some degree, if received by me, and I was the Person as is supposed to have writ the Letters to which they are Answers. That I used to have any Correspondence, is that proved? Is not one and the same necessary in order to ascertain the Charge?

Any Man that pleases may write to me, and take those Names upon him; I am not to answer for that, unless I have appeared to receive them, and kept up the Correspondence.

The Letter from *Motfield*, dated the 11th of *May*, cannot be reasonably thought to have been wrote with any other View than that of being intercepted, and of fixing upon me the Letter of *April 20th*.

This Letter is committed to the common Post-Office, and sent upon this Errand; one may doubt who writ it, but one cannot doubt with what Design it was writ: Your Lordships Wisdom will see thro' those malicious Disguises and not make me account for Letters which have been banded to and fro, between unknown Correspondents, on a Design to raise a Suspicion of a third Person, altogether a Stranger to what is writ. And here I desire that the Observation made by one of my Counsel may not be forgot; that is, all the intercepted Letters from abroad, mention Persons that lay hid under secret Names, and are discover'd by doing of such Deeds, and by such Circumstances as will fasten those Names upon them: Tho' the Committee were not at a Guess, yet they were often at a Loss.

In my Case the fictitious Names applied to me are often attended with such Descriptions and Circumstances, as very naturally lead those that offer these Letters to fix them on me; the Writers of them use all their Art not to disguise, but to open



the thing, and seem to be in pain lest they should not be well enough understood.

This being contrary to the Method of Reserves in all other Cases, smells strong of a malicious Design.

The Letter of *July 25th*, from *Digby* to *Weston*, is not well contrived as it should have been ; yet I am to be understood by it, because of the Circumstances I was then under which the Writer was apprised of.

These are the only two Instances of Letters supposed to be writ from abroad : They are not consistent : Shall they affect me in so high a manner ?

It remains to be considered in the third place, whether there was a supported Correspondence between the Pretender and his Agents, and Mr. *Kelly* here ? Whether I was at the Head of it, and am justly to answer for it ? Mr. *Kelly*, I hear, hath owned at your Bar, and declared, which I also declare, I never knew a Line of any Letter he writ to Foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Present of the Dog, the Account of that is in a Letter to *Hatfield*, dated *May 5*. not signed ; in which are these Words, *The little Dog was sent ten Days ago, and ordered to be delivered to you* : but there is no Intimation in this, or any other Letter from abroad, that this Present was intended for me.

In two Letters from hence, by whom writ it doth not appear, some body is meant under the different Names of Mr. *Jones* and Mr. *Illington*, in such manner as designed for the same Person ; but the Circumstances are neither applicable to my self or my Wife, or me particularly. The Letter dated *May 7th*, from *Hatfield*, to *Musgrave*, being five Days

Days after the Burial of my Wife, cannot mean her; and being but five Days after, it can as little mean me: So that the Writer of this Letter must either have known nothing of my Family-Affairs, or if he did, must dissemble his Knowledge of them, to raise a suspicion, and in either Case what he says is not to be regarded. The Surgeon and Mr. *Kelly* only knew any thing of this matter, and they can best clear it.

Mrs. *Barnes*, she varies, and sometimes the Dog is for me, and sometimes for her.

As for myself, I never asked for, received, or saw this Present, nor know any thing of it, but from common Fame; nor have I, to this Day, had any Message or Letter whatsoever concerning it. The End of this Design seems to be, to point me out by the Name of *Jones* and *Illington*, subscribed to the Letters of *April* 20th, by using them again in relation to this Present.

And perhaps they are not much in the wrong to think, that *one intercepted Dog* should be of as much use as *Ten intercepted Letters*. Both Contrivances then must have succeeded, had I not been able to prove that those Letters were not writ with my Order or Knowledge; and therefore the Use of those Names, in subsequent Letters, is a Continuance of the Fraud, and this obviously runs through the whole of the Correspondence; For wherever the Name of *Jones* and *Illington* are, they are used in applying them to me, because they are the same.

These Points have not only been deny'd, but disprov'd with all Manner of Credence and Clearness.

My Council have shew'd that all these suspicious Correspondencies are to the last Degree absurd to apply to me, and no one would apply them: That I could not order the Letters of the 20th of *April*, to which the Names of *Jones*, &c. are subscrib'd,

I think is plain, and then the Evidence falls or depends upon it.

As to the Journeys to and from *Bromley*, where the Prisoner *Kelly* had frequent Access to me, and therefore I might probably dictate those Letters, the Council for the Bill have not open'd themselves on that Head ; but your Lordships have heard it made out, and because it is material I shall repeat it.

(Here *Wood's* Examination was read.)

By all these Accounts, nothing could have been easier for the Persons themselves to manage here, than getting an Account of my Neighbours in order to render the Contrivance more plausible.

That Mr. *Kelly* is no Stranger to me I own ; but that he is in any Degree intimate with me, or frequently saw me, I deny ; and what Evidence is there from them to the contrary ; or how is this solemn Denial at your Bar contradicted ?

The Chairman says, He carry'd him twice or thrice to the Deanry three or four Years ago ; and this *Brown*, the Chairman, he swears, he carry'd me once in three or four Years Time. I believe he may. The Porter he says, That he brought a Lettter and some Stockings from *Kelly* to me. The Foundation of this Story is true, for Mr. *Kelly* used to furnish me with *Beaver* Stockings and Gloves ; not but that the Circumstance of the Porter coming up to my Bedchamber at that dirty Time of the Year, is very extraordinary ; and even this Evidence owns, he was never sent by me to him.

Now, on the other Side, there is the Evidence of almost all my Servants, who have, upon Cath, attested, that they do not know either the Name or the Face of Mr. *Kelly*, which could not possibly be, did he use frequently to resort to me, Such a slight Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him

of

of such a dangerous Consequence as these are, which the Report insinuate, to have pass'd between us: However, Suspicion is not now the Business. They that prove somethings may be allow'd to suppose more; they that prove nothing, have no Right to indulge their Suspicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be such, are not equal to any one Matter of Fact, well attested; it may strengthen the Fact, but cannot support it. They cannot be Evidence themselves, because one Probability may be set against another.

I use this Distinction between Evidence in Law, and reasonable Evidence, because the Council for the Bill have asserted something like it.

I own I always thought the Publick Law of the State, the Publick Reason of the State, and whatever it is in another Country, yet in this Country, no Evidence can be reasonable that is not legal: But I ask, What sort of Evidence, either in Reason or Law, is brought against me? How am I prov'd to consult and correspond, to raise an Insurrection against his Majesty and his Kingdom, and to procure a foreign Force to invade the same in Favour of the Pretender?

How am I prov'd, in the second Place, to have corresponded with the same Pretender, and with Persons employ'd by him? Is one Article of these Charges made out against me with any Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shew'd to be vain, and unjust.

If the Proof in these Cases wants Strength, can the Hearsay of *Neynoe* supply the want of Proof, and render it valid, since *Neynoe* pretends, for ought that appears, not to have known any thing of me; he only heard *Kelly* say so, and Mr. *Kelly* denies it; and there is, I think, no Reason why such a dead Evidence should affect me, or *Kelly* himself, much less



less me through him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contracting what *Neynoe* said, I believe what *Neynoe* said would not be of any Weight; besides, what *Neynoe* dead says, and *Kelly* now alive denies, ought not to have any Force.

Concerning Hearsay Evidence in General and concerning the due Regard to it, I humbly desire your Lordships, that a Passage may be read out of Sir *John Fenwick's* Bill of Attainder. (The whole Preamble read.)

My Lords, I humbly desir'd to have this read, because I thought it would take away a Distinction between legal and Parliamentary Evidence; that what was not legal might be Parliamentary. I believe here is a Condemnation of him by Parliament; therefore, I think, the Condemnation of him must be by Parliamentary Evidence. It is recited in this Act as one of the Inducements that mov'd the King, Lords, and Commons to pass that Act, that Sir *John Fenwick* had contriv'd and fram'd several Papers, &c. only by Hearsay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attainting a Man in another? If it was judg'd hard in Sir *John Fenwick's* Case to charge a Man by Hearsay, can the being thus charg'd be any Proof against me? Sure the House of Commons in 96, that brought that in, would have so thought, nor would those of your Lordships consented here, or elsewhere, to have pass'd it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose Sir *John Fenwick*, but favour'd his Case, and are yet against me. Is the Guilt objected to me, if prov'd, in any Measure like his? Or is there any Comparison between the Proof against him and me?

As

As to the Paper and Information given in by *Neynoe*, and printed in the Appendix, it is plain he was drawn in to have sworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up some Days before it happen'd. He knew what Use and Purpose the Protests of your Lordships were chiefly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to ask or receive such a Sum of Money.

'Tis said he was the late Earl *Marischal's* Bed-fellow for several Months, and had drawn up Heads for Memorials to be deliver'd to the Regent; but he had kept no Copies of these Heads, or foul Draughts which would have shewn whether they were given in to promote it, or discover it; in either case the Evidence of being then employ'd, would have been of Service; but they have not been able to produce a Line of such Heads or Memorials, yet the Report of the House of Commons, upon the Basis of these Memorials, builds the whole Fabrick. He knew that I went under the Names of *Jones* and *Illington*, and undoubtedly he knew Mr. *Dubois*: If the Scheme of Writing that Letter myself had been seen, he would have found out a Reason for the Correspondence; and 500 *l.* would have made him affirm, That he carry'd the Letter himself. He knew the Pretender's particular Opinion of me, or of any Body else, and that he rely'd on Advices from me: How did he know that? He told him so. Who told him? It is not suppos'd Mr. *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretender.

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Let me speak, my Lords, as always I hope I shall, with that Modesty as becomes Justice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transactions ? Is it possible to believe this Pretender to Secrecy, could have had, or shall he still have any Degree of Weight, that threw away his Life, rather than venture to stand to the Truth of what he said before his Death, and then he could have been contradicted, or Pangs of Conscience might have made him unsay what he had said ? But a dead Man can retract nothing ; what he hath writ, he hath writ ; The Accusation must stand just as it did, so far as it concerns him ; and we are depriv'd of the Advantage, which Truth and Remorse once extorted, and would have again extorted from him. However, I would have been glad to have had all that ever this Wretch said, and would hope that by comparing of the several Stories, which he several Times told, some Light might have been gain'd, which is now wanted : — Particularly by the Knowledge of what he said freely and voluntarily, when he was in good humour, and before his rough Usage, on his Return from *Rome* had frighted him ; but I think we have the Evidence only of a few of the last Days of his Life, all the preceeding Time is Blank. He under-went frequent Examinations, but they were not, it seems, so maturely weighed and digested as to be thought worth the committing to writing ; but he is gone to his Place, and hath answer'd for what he hath said at another Tribunal. I desire not to disturb his Ashes, farther than what is necessary for my Defence.

Your Lordships will observe first, the Inconsistency of some Part of the Charge. Secondly, the Improbability of it. The Report takes Notice of  
three

three several Periods, or Stages of Time ? When by Consequence of some Informations from the Regent, the Design did not take Place ; the first was, during the Election ; the 2d was, the King's going to *Hanover* ; and the third was, the breaking up of the Camp ; there is not the least Hint as to the last of these three Designs, in any of the Papers, tho' in the Recital of the Bill it is mention'd as the third Part of the Plot, and the most detestable Part of the Design, to lay violent Hands on his Majesty and his Royal Highness.

There is not the least Colour of Proof, as to the first Part of the Conspiracy, which was to take Place at the Election ; their only Reason for that, is from a Passage, where it is said that the present Opportunity is elaps'd, that is, the Opportunity of the Election.

I shall recite the Passage, as it lyes in the intercepted Letter, and make some Reflections on it : *Notwithstanding the Opportunity is elaps'd, (says the Writer to Jackson) I agree with you, another may offer before the End of the Year, tho' not perhaps every Way so favourable.*

The Committee suppose this Letter to be from *Kelly*, and dictated by me, and they suppose the Words to refer to the time of the Election, and from those Suppositions infer that I knew something of it. On the contrary, I shall, on the two first Suppositions shew the Impossibility of it ; if this was a Letter from me, or from any other Person, dictated by me to the Pretender, I must write as in Answer to some Letter sent from them to me, in repeating the Expression ; and his Opinion in the Letter must have been founded on Intelligence before receiv'd : This Intelligence, considering the Distance between *London* and *Rome*, must have been communicated two Months, if not lon-



ger, before the Date of this Letter ; if we go back two Months, and talk of *the Election being elaps'd*, it was not begun ; consequently that Opportunity in the Letter could not possibly mean *the Time of the Election* ; and if so, it is impossible that it should be a Letter to the Pretender, that can consist with the Charge of the Person's writing in *April 1720*.

If it be a Letter writ in good Earnest, it appears they had given over all Thoughts at that Time : *I agree with you*, says he, *another may offer before the End of the Year* ; and yet he finds some Words in a Letter writ ten Days after, wherein, under the Name of *Jones*, I am made to be deeply concern'd in a Conspiracy.

How can this be consistent, if I writ and directed that Letter, and was engag'd in the second Part of the Conspiracy ?

Both cannot be true, both may be false ; and I hope I have satisfy'd your Lordships, that as I did not dictate the one, so I was no Ways concern'd in the other.

Can any one believe, that under the sad Circumstance of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature ? Was that a Time to provide for a Stranger ? And for a Man, unless under the Power of Prejudice, to believe such an Improbability, or that I had such a Conjecture : I forbear former Instances.

I shall now consider the Improbability, as well as Inconsistency of the Charge brought against me without positive Proof. You will allow me to answer the Indictment in the same Manner as it is laid.

Is it probable that If I were engag'd in any such Design, no Footsteps should be seen of any Correspondence

response I had with the late Duke of *Ormond*, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is consistent with my Duty to my King and Country?

Is it probable that I would choose rather to engage in such Design with Mr. *Dillon*, a Military Man I never saw, and with the Earl of *Mar*, whom I never convers'd with, except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender several Years, and had a Pension abroad? Is this a Season for me to enter into Conferences with him about restoring the Pretender, and do this not by Messages but by Letters, not sent by Messengers but by the common Post? That by thus writing to him by the Post, I should advise him after the same manner to write to me, and by these Means furnish Opportunities, towards detecting the Persons and bringing myself into Danger? How doth that consist with the Caution and Secrecy which are said to belong to me? Must not I have been rash to have laid myself open in such a Manner? This is an inconsistent Scheme, the other a bold Assertion. Is it probable when attending the sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should enter into Negotiations of this kind?

There was no need of dispatching any of those three Letters, merely to excuse my not writing: The Circumstances of my Family had been a sufficient Apology, and more effectual.

Is it probable that when I was carrying on public Buildings of various kinds at *Westminster*, and *Bromley*, consulting all the Books from the *Westminster* Foundation, engaging in a Correspondence with learned Men, about settling an Important

Point of Divinity ; that at that very Time, I should be carrying on a Conspiracy ? Those that entertain such Thoughts without Reason, may also condemn me without Argument.

Is it probable that I should meet, and consult, in order to carry on and forward this Correspondence with no Body, and no where ?

That I, who always liv'd at Home, and except at Dinner Time, never stirr'd out of my Chamber ; receiv'd all Persons that visited me, and was deny'd to none, should have an Opportunity to be so engag'd ? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing ? No Evidence among my Papers, tho' they were all seiz'd at both my Houses, and confining all my Servants, but one, for about 10 or 11 Weeks, searching him twice in the Tower, and searching my self, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

Is it probable, that I should form and direct a Conspiracy, and carry it on with any Success, that am not us'd to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions ? My Way of Life hath not led me to converse with such Men and such Matters, except on the Occasion of meeting in Parliament, but in a Council of War, I never was. Have I yet in any Instance of my Life meddled remarkably out of my own Sphere, in Affairs foreign to my Business or Character ? I might have been thought to have been too active in my proper Station and Business ; but I was never charg'd with War, nor any Ways inform'd in the Art of it.

Is it probable, that Persons concern'd in such Military Scheme, (if any such be form'd by Men

of the Sword that apply to such Business) should be punish'd without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concern'd with them, suffer all the Pains and Penalties short of Death, which the Parliament can inflict for a suppos'd I know not what, and what I don't to this Day apprehend.

Here is a Plot of a Year or two standing to subvert the Government with an arm'd Force, an Invasion from abroad, an Insurrection at Home; just when ripe for Execution it is discover'd; and 12 Months after the Contrivance of this Scheme, no Consultation appears, no Men corresponding together, no Provision of Money, Arms, or Officers—not a Man in Arms——And yet the poor Bishop has done all this.

*Lay* and *Plunket* carry on a Treasonable Correspondence; They go to *Rome* and receive Directions from the Pretender himself, to promote his Cause—it does no where appear that the Bishop has the least Share in, or is any way privy to, their Practices—And yet the Bishop has done all, He is *principally concern'd in forming, directing, and carrying on this Detestable Conspiracy.*

What could tempt me to step thus out of my Way? Was it Ambition and a Desire of climbing into a higher Station in the Church; There is not a Man in my Office farther remov'd from this than I am; I have a hundred Times said, and sincerely resolv'd, I would have been nothing more than I was, at a Time when I little thought of being any thing before, and I could give an Instance of this Kind if I thought proper.

Was Money my Aim? I always despis'd it, too much perhaps, considering what occasion I am now like  
like



like to have for it: For out of a poor Bishoprick of 500 *l. per Annum*, I have laid out no less than two Thousand Pounds, towards Repairs of the Church and Episcopal Palace; nor did I take one Shilling for Dilapidations. The rest of my little Income has been spent as is necessary, as I am a Bishop. Nor do I repent of those Expences now, (tho' since my long Confinement I have not receiv'd the least Part of the Income of my Deanry) not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I securely rely.

Was I influenc'd by any Dislike of the Establish'd Religion, and secretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords, ever since I knew what Popery was, oppos'd it, and the better I knew it, the more I dislik'd it.

I begun my Study in Divinity, when the Popish Controversy grew hot about that immortal Book of *Tillotson's*, when he undertook the Defence of the Protestant Cause in general, and as such I esteem'd him above all.

You will pardon me, my Lords, if I mention one thing:

Thirty Years ago, I writ in Defence of *Martin Luther*, and have preach'd, and writ to that Purpose from my Infancy, and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Protestant Religion, as profess'd in the Church of *England*.

Once more: Can I be suppos'd to favour Arbitrary Power? The whole Tenor of my Life hath been otherwise: I was always a Friend of the Liberty of the Subject, and to the best of my Power constantly maintain'd it: I may have been thought mistaken in the Measures I took to support it.

It matters not by what Party I was called, so my Actions are uniform.

To return to the Point : The Charge brought against me in the Manner it is brought, is improbable : If I could be guilty of it, I must have acted under a Spirit of Infatuation : yet I have never been thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contain'd in this Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, my Lords, and have been expecting an immediate Tryal. I have, my Lords, declin'd no Impeachment. The Correspondence, with the Earl of CLARENDON, was made *Treason*, but with me it is only *Felony*. He was allow'd the Conversation of his Children, by the express Words of the Act : Mine are not so much as to write, so much as to be sent to me.

What is most particular in my Case I will repeat distinctly, that my Reverend Brethren may hear it. I am render'd incapable of using or exercising any Office, Function, Authority, or Power Ecclesiastical, not only in his Majesty's Dominions, but any where else : Very hard ! That such Spiritual Power as is not deriv'd from Men, but God himself, should be taken from me !

And I am not only *deprived of all Offices, Dignities, and Benefices Ecclesiastical*, and for ever *banish'd the Realm*, but likewise precluded from the Benefit of Royal Clemency, and *made utterly incapable of any Pardon by his Majesty, his Heirs and Successors*.

My Lords, I insist on my Innocence ; that I am not guilty ; and if I am not prov'd so, your Lordships will thus Judge ; if otherwise, I perswade myself I shall find some Degree of Mercy.

You will not strip a Man of his Substance, and then send him where he cannot subsist ; you will not  
send

send him among Strangers, and then hinder others from performing Humanity to him ; you will not give him less time to order his Affairs and depart the Kingdom, than the Bill hath taken in passing through both Houses.

The Great Man, I last mention'd, carry'd a great Fortune with him into foreign Parts, and had the Languages ; was well acquainted abroad : The Reverse of all this is my Case ; I indeed am like him in nothing but his Innocency, and his Punishment. It is in no Man's Power to make us differ in the one, but it is in your Lordships Power to make us differ widely in the other, and I hope your Lordships will do it.

But to sum up the Arguments : It hath been frequently observ'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High Treason brought against me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made so by any Power on Earth ; for the Law that requir'd the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjust to declare any Proof legal, because of my Prosecution : As extraordinary would it be, to declare the Acts themselves, *ex post facto*.

Never was there a Charge of so high a Nature, and so weakly prov'd.

A Person dead, so that there is not an Opportunity to falsify him by contradicting him, a Charge not supported by any one Evidence, nor by any one Proof of any Thing that hath been writ or receiv'd by me, nor even by any one criminal Word prov'd to have been spoken by me ; but by intercepted

Letters

Letters and Correspondence, in which appears not the least Certainty.

Some of those Letters, shown to Persons, with a Design to fasten something on them ; others writ in Cyphers, and fictitious Names, throwing out dark and abstruse Hints of what Persons went by those Names, sometimes true and sometimes doubtful, and often false, who continue all the while Strangers to the whole Transaction, and never make the Discovery, till they feel and find it advancing itself towards them : My Lords, this is my Case, in short.

I have a hard Task to prove my Innocence : Shall I stand convicted before your Lordships on such an Evidence as this ? The Hearsay of an Hearsay ; a Party dead, and that deny'd what he said ; by strange and obscure Passages, and fictitious Names in Letters, by the Conjecture of Decyphers, without any Opportunity given me of examining and looking into the Decyphering ; by the Depositions of Post-Office Clerks about the Similitude of Hands ; their Depositions made at distant Times, and without comparing any one of the Originals, by a strange Interpretation of them ; for nothing more, I am perswaded, can be made of the Arguments, than what is call'd the intercepted Correspondence.

Shall I, my Lords, be depriv'd of all that is dear to me, and in the Circumstances I am in, scarce able to bear up, and by such an Evidence as would not be admitted in any other Cause or any other Court, and would hardly affect a Jew in the Inquisition of Spain ?

And shall it be receiv'd against a Bishop of this Church, and a Member of this House ? God forbid. Give me Leave to make mention of a Text in Holy Writ : *Against an Elder receive not an Accusation, but before two or three Witnesses.* It is not said,



Condemn him not upon an Accusation, &c. But receive it not ; I am something more than an Elder, and shall an Accusation against me be countenanced, without any one Instance of Proof to support it?

This is not directly Matter of Ecclesiastical Constitution: There you read, one Witness should not rise up against an Elder ; but here, at the Mouth of two Witnesses, or three Witnesses, shall the Matter be establish'd: And as this Rule was translated in the State of the Church, People always thought fit to follow it.

Shall I be the first Bishop in this Church, condemn'd upon Conjecture, on fictitious Names and obscure Passages in Letters, instead of two or three Witnesses?

Will not others endeavour to make the same Precedent, and desire the same Influence of it to succeeding Ages, and even concur in such an Act, in order to render me incapable of using or exercising any Power or Authority, &c. Is this good Divinity, or good Policy?

As to the Justice of the Legislature, in some Respects it hath a greater Power than the Sovereign Legislature of the Universe ; For he can do nothing unjust. But tho' there are no Limits to be set to a Parliament, yet they are generally thought to restrain themselves, to guide their Proceedings in Criminal Cases, according to the known Law.

The Parliament may order a Criminal to be tortured, Who can say, they cannot? But they never did, nor never will, I hope ; because Torture, tho' used in other Countries, is not known here :

Is it not torturing to inflict Pains and Penalties on Persons not suspected of Guilt, nor plainly prov'd guilty? It is not much unlike it. The Parliament may if they please, as well as upon the Bill of perpetual Imprisonments, upon a Bill of perpetual

tual Exile, reserve to the Crown a Power to determine the one as well as the other. They have so enacted it in the one Case, but they have not enacted it in the other. The Law knows nothing of such absolute perpetual Imprisonments.

The Law may, in like Manner, condemn a Man on a Charge of Accumulated and Constructive Treason. They did so in the Case of the great Lord *Strafford*, and that by Accumulated and Constructive Proof of such Treason, that is, by such Proofs so well interpreted, as plainly to communicate Light and Strength to each other, and so to have all Force, without the Formality of Evidence. Was such Proof ever admitted by any one to deprive his Fellow Subject of his Fortune, of his Estate, his Friends, and Country, and send him in his old Age, without Language or Hope, without Employment to get the Necessaries of Life, to starve? I say again, God forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or even to seem to violate their Constitution in any Degree, which they ought to preserve against any Attempts whatsoever.

But where once such extraordinary Steps as these are taken, and we depart from the fixed Rules and Forms of Justice, and try untrodden Paths, no Man knows where this shall stop.

Tho' I am worthy of no regard, tho' whatsoever is done to me may, for that Reason, be look'd upon to be just, yet your Lordships will have some Regard to your own lasting Interest, and that of Posterity.

This is a Proceeding with which the Constitution is not acquainted, which, under the Presence of supporting it, will at last effectually destroy it.

For God's Sake, lay aside these Extraordinary Proceedings, set not up these new and dangerous Precedents ; I, for my Part, will voluntarily and chearfully go into perpetual Banishment, and please my self that I am, in some Measure, the Occasion of putting a Stop to such Precedents, and doing some Good to my Country, and will live, wherever I am, praying for its Prosperity ; and do with the Word of Father *Paul* to the State of *Venice*, say *Esto perpetuo* : It is not my departing from it I am concern'd for : let me depart, and let my Country be fix'd upon the immovable Foundation of Law and Justice, and stand for ever.

I have, my Lords, taken up much of your Lordships Time, yet I must beg your Attention a little longer.

Some part of my Charge hath been disproved by direct and full Evidence, particularly that of writing the Letters of the 20th of *April*, or that I knew who wrote them, which I utterly deny that I ever did or as yet do know. Other Parts of the Charge there are, which are not capable of such Disproof, nor indeed require it ; there I rest. But my Lords, there is a Way allow'd of vindicating My self, It is generally Negative ; that is by protesting and declaring my Innocence to your Lordships, in the most deliberate, serious and solemn Manner ; and appealing to God, the Searcher of Hearts, as to the Truth of what I say, as I do it in what follows : I am charg'd in the Report with directing a Correspondence to Mr. *Kelly* ; but I solemnly deny that I ever, directly or indirectly, saw a single Line of any of their Letters 'till I met with them in Print. Nor was the Contents of any of them communicated to me. I do in the next Place deny, that I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent. Nor was I ever acquainted with any Attempt to be made on the  
King's

King's going to *Hanover*, or at the Time of the Election. Nor did I hear the least Rumour of the Plot to take Place after the breaking up of the Camp, 'till some Time after Mr. *Laver*'s Commitment. I do with the same Solemnity declare, that I never collected, remitted, receiv'd, or ask'd any Money of any Man, to facilitate these Designs; nor was I ever acquainted with, or had any Remittances whatsoever from, any of those Persons. I never drew any Declaration, Minutes, or Paper, in the Name of the Pretender, as is expressly charg'd upon me. And that I never knew of any Commission issu'd, Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raise an Insurrection in these Kingdoms. All this I declare to be true, and will so declare to the last Gasps of my Breath.

And I am sure, the further your Lordships examine into this Affair, the more you will be convinc'd of my Innocency. These contain all the Capital Articles of which I am accused, in the Report of the House of Commons.

Had the Charge been as fully prov'd as ascertain'd, it had been vain to make Protestations of my Innocency, tho' never so solemn.

But as the Charge is only supported by the slightest Probabilities, and which cannot be disprov'd in any Instance, without proving a Negative; allow the solemn Affeверations of a Man in Behalf of his own Innocence to have their due Weight, and I ask no more, than that they may have as much Influence with your Lordships as they have Truth.

If on any Account there shall still be thought by your Lordships to be any seeming Strength in the Proofs against me: If by your Lordships Judgments, springing from unknown Motives, I shall be thought to be guilty, if for any Reasons, or Necessity



cessity of State, in the Wisdom and Justice of which I am no competent Judge, If your Lordships shall proceed to pass this Bill against me: God's Will be done: *Naked came I out of my Mother's Womb, and naked shall I return; and whether he gives or takes away, blessed be the Name of the Lord.*

The Bishop having done speaking, and being with his Council withdrawn, the Lord *Lechmere* took Notice, That the most material Part of the Charge against that Prelate, was his dictating the Treasonable Letter to Mr. *Kelly*; and since the Letter was the only legal Witness they could have in this Doubtful Case, he therefore moved, ' That ' *George Kelley, alias Johnson, now a Prisoner in the ' Tower of London, be brought to the Bar of this ' House on Monday Morning next, to be examined ' upon Oath, on the Bill entituled, an Act to inflict ' Pains and Penalties on Francis Lord Bishop of Ro-* ' *chester.* He was seconded by the Earl of *Carlisle*; but opposed by the Court Lords, so that the Question being put upon his Motion, it was resolv'd in the Negative by 80 Voices against 40; Whereupon several Lords entred and signed the following Protestation.

*Dissentient.*

1. Because we think it unquestionable, that the said *Kelly* is a competent legal Witness to the Matters charged by the Bill against the Bishop, and could not be legally refused to be sworn as such, if the Bishop were on his Tryal for the same in the ordinary Courts of Justice; and that, whether the said *Kelly* was produced for or against the Bishop. And we conceive, that if the Council for the Bill had thought fit to have produced him in Support of the Bill, that even no legal Objection could have been made by the Bishop's Council against his

his being so produced and sworn ; these Bills, pass'd this House against the said *Kelly*, not having receiv'd the Royal Assent, and there not being in the said Bill, in our Opinions, any thing that can destroy even his legal Testimony, when the same is pass'd into a Law.

2. Because the three Letters dated *April 20*, 1722, supposed to contain Treasonable Correspondences with the Pretender and some of his Agents, have been made the principal Charge against the Bishop, and have been dictated to the said *Kelly* by the Bishop, at or about the Time of their Date ; but this not being as yet done, as we think, by direct or Positive Proof, by any living Witness of the Fact, but by Circumstances only, we think it most proper, and most safe and just, to endeavour to discover the Truth of that material Fact by the best Evidence the Nature of the Thing can admit of ; and that this House should not be left under the Difficulties of judging on this extraordinary Occasion, from doubtful Circumstances, if the Fact may be clear'd by certain positive Proof, and the Examination of a competent and a living Witness upon Oath, at the Bar of this House.

3. Because several living Witnesses have been examined on Oath, at the Bar of this House, on Behalf of the Bishop, in order to prove by their positive Testimony, and other Circumstances, that the Bishop did not dictate, or direct, or was any way privy to the Writing the said Letters, or any of them, which has, in our Judgments, render'd it yet of greater Importance, that the supposed Writer of those Letters should be brought under the most strict and solemn Examination, before the Bill has passed this House.

4. Because the said *Kelly*, tho' examined before Committees of both Houses of Parliament, and elsewhere,

where, hath not, to our Knowledge, been yet examined on Oath to the Matters contain'd in this Bill, and it having appeared to us, in other Instances on this Occasion, particularly of Mrs. *Barnes* examined for the Bill, and of *Bingley* against it, who have materially varied their Examinations at the Bar of this House, from their former Examinations, at the same time declaring that their former Examinations were not taken and sworn to by them ; we think it may be both dangerous and derogatory to the Honour and Justice of the House, not to examine on Oath a Person capable of discovering the Matters of Fact, on which the Justice of the Bill against the Bishop must depend, and especially after the said *Kelly* hath declared in the most solemn manner, next to that of his being upon Oath, that the Bishop did not dictate, or was privy to the writing of the said Letters, or any of them ; and the Bishop himself, in his Defence, having also, in the most solemn manner of Affe-  
 veration, declared his Innocence in this Particular, and expressly referring to the former Affe-  
 verations of the said *Kelly*, as we conceive, as a Testimony in Confirmation of his own Affe-  
 verations.

5. Because we conceive, that the said *Kelly*, was not only a legal Witness for or against the Bishop, in the strictest Construction of Courts of Judicature, but the Examination of him upon Oath in this Bill, is, in every respect whatsoever, in our Judgments, less liable to Objection than many, and most other Evidences which on this Occasion have been allow'd; because the Bill pass'd by this House against the said *Kelly*, if it obtains the Royal Assent, as is most probable, doth, in Judgment of Law, as hath been declared by the Judges, acquit him of any future Prosecution for the said Treasons therein charged upon him : And there is no Judgment or Punish-

Punishment inflicted upon him in the said Bill, which can, when pass'd, destroy his Capacity for giving Evidence on any Occasion; and the same having passed this House, and not passed the Royal Assent, leaves the said *Kelly*, in our Opinions, under less Influence either of Hopes or Fears, than such Witnesses which have been examined on this Occasion, under Commitments and Charges of High Treason, and, as we conceive, less liable to that Objection than the Declaration of *Philip Neynoe*, which has been read against the Bishop, tho' never signed or sworn to by him, and the said *Neynoe* some Months since drown'd in endeavouring his Escape, and which Declaration appears to us to have been made by him under the strongest Influences of Guilt and Terror.

6. We think the Crimes charged in the Bill against the said *Kelly*, are, in their Nature, distinct and independent on those charged on the Bishop, *Kelly's* Guilt in writing the said Treasonable Letters prov'd upon him, being the same, altho' the Bishop be altogether innocent in Relation thereto, for which, as we conceive, this House did refuse to permit *Kelly*, on his Bill, to give Evidence that the Bishop did not dictate the said Letters, and for which Reason we are of Opinion, that the Evidence which *Kelly* might have given touching the Bishop's dictating the said Letters, or not, would have produced no Consequence at all with regard to the Bill pass'd against himself, altho' it must necessarily have contributed to the Proof of the Guilt or Innocence of the Bishop.

7. This House having, with great Honour and Justice, declared to several Persons produced as Witnesses on this Occasion, that it was not required from them to depose to any thing which did or might tend to their own Accusation; the Testi-

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mony of the said *Kelly*, if he had been examined upon Oath, we doubt not, would have been taken under the same just Indulgence ; and if he had submitted to have been examined on Oath to the Matters of this Bill, such Examination being, in that respect, voluntary, could not in our Opinions have been construed as forced from him by the Authority of this House ; and such a Testimony as he might have given would have remained under Consideration and Judgment of this House, as to its Credit and Influence, on all Circumstances, in the same manner as the other Evidence for and against the Bill still does.

|                   |                    |                          |
|-------------------|--------------------|--------------------------|
| <i>Comper</i>     | <i>Bathurst</i>    | <i>Berkley de Str.</i>   |
| <i>Strafford</i>  | <i>Salisbury</i>   | <i>Fr. Cestrien'</i>     |
| <i>Scarsdale</i>  | <i>Northampton</i> | <i>Willoughby de Br.</i> |
| <i>Dartmouth</i>  | <i>Bingley</i>     | <i>Masham</i>            |
| <i>Lechmere</i>   | <i>Foley</i>       | <i>Poulet</i>            |
| <i>Pomfret</i>    | <i>Anglesey</i>    | <i>Compton</i>           |
| <i>Ashburnham</i> | <i>Bruce</i>       | <i>Middleton</i>         |
| <i>Cardigan</i>   | <i>Gower</i>       | <i>Hereford</i>          |
| <i>Litchfield</i> | <i>Uxbridge</i>    | <i>Hay</i>               |
| <i>Guilford</i>   | <i>Exeter</i>      | <i>Denbigh</i>           |
| <i>Aylesford</i>  | <i>Brook</i>       | <i>Wharton</i>           |
| <i>Weston</i>     | <i>Craven</i>      |                          |

On *Monday*, the 13th of *May*, the Bishop of *Rochester*, being, for the last time, brought to the Bar of the Lords House, Mr. *Reeves*, one of the Council for the Bill, made a full and smart Reply, to the Bishop's Defence ; and, in particular, justify'd what he had said before about the Letter the Bishop wrote in the *Tower*, and which was found about one of his Servants. And as the Bishop had closed his Speech with a Passage out of the Holy Scripture, so Mr. *Reeves* concluded with these Words out of

of Ecclesiastes, (Chap. x. v. 20.) *Curse not the King, no not in thy Thought, and curse not the Rich in thy Bed Chamber : For a Bird of the Air shall carry the Voice, and that which hath Wings shall tell the Matter.*

After this the Council for the Bill produc'd and examin'd several Witnesses, to contradict what had been deposed relating to *Neynoe*.

But what was most remarkable in this Day's Proceeding, was this : The Bishop of *Rocheſter*, and his Council, having much inſiſted and endeavour'd to prove that he did not dictate the Treasonable Letters in Question, because at the time they were supposed to be written, and before and after, *he was disabled in his Chamber*, the Lord Bishop of St. *Aſaph* thought it his Duty to acquaint the House, that at that very Juncture of Time, he had receiv'd a Letter from the Bishop of *Rocheſter*, and of his own Hand Writing. This voluntary Evidence, from a Person of so venerable a Character, made a visible, but different, Impression on the whole Assembly ; and did no less spirit and glad the Bishop of *Rocheſter*'s Enemies, than abash and grieve his Friends : But the Bishop himself rather fired with Indignation, than daunted by so unexpected a Charge, absolutely deny'd the Fact, boldly challeng'd his Accuſer to prove it, and offer'd to put the whole Tryal upon that single Point.

The Bishop of St. *Aſaph* ſtill affirm'd that he received a Letter, which he took to be written by the Bishop of *Rocheſter* himself, from the Hands of one of his Servants, then at the Bar ; but being somewhat perplex'd as to the Hour and the Day ; and, at the ſame time, contradicted by *Grant*, the Bishop of *Rocheſter*'s Servant, the Priſoner, in an exulting Manner, preſs'd his Accuſer to produce the Letter in Question : Which the other not been able to do, the Bishop of *Rocheſter* ſeverely animadverted upon him

him, for being so forward to give such rash Evidence, and endeavouring to fix Perjury upon a Man of his Holy Function. This unlucky Affair being over, the Lords, in a grand Committee, went through the *Bill for inflicting Pains and Penalties on Francis Lord Bishop of Rochester*, and about Ten-a-clock in the Evening, adjourned to *Wednesday, the 15th of May.*

Their Lordships being then sat, the said Bill was read the third time, and a motion being made, that the Bill should pass? It occasioned a very warm and long Debate. The Speakers, *for* and *against* the Bill, were as follows, the Numerical Figures shewing the Order in which they spoke :

| <i>Against the Bill.</i> | <i>For the Bill.</i>               |
|--------------------------|------------------------------------|
| 1 Earl Poulet            | 2 Lord Bp. of Salisbury            |
| 3 Lord Bishop of Chester | 4 Lord Bp. of London               |
| 5 Duke of Wharton        | 9 Earl of Finlater and<br>Seafield |
| 6 Lord Bathurst          | 10 Duke of Argyle                  |
| 7 Earl of Strafford      | 12 Lord Lechmere                   |
| 8 Lord Trevor            | 14 Earl of Peterborough            |
| 11 Lord Gower            | 15 Earl of Cholmondley.            |
| 13 Earl Comper           |                                    |

The Earl Poulet, who open'd the Debate, spoke to the Nature of this Bill, shew'd the Danger of such an extraordinary Proceeding, and urg'd, that the Swerving from the fixed Rules of Evidence, and consequently from Justice, must inevitably be attended with the most fatal Consequences to our excellent Constitution. The Lord Bishop of *Salisbury*, in Answer to that, alledg'd, that as extraordinary Diseases require extraordinary Remedies, so in Cases of extream Danger and Necessity, when the very Being of the State lies at Stake, if the common Law cannot reach great Offenders, the Legislature

gillature ought to exert itself. He was reply'd to by the Lord Bishop of *Chester*, who own'd that extraordinary Proceedings may indeed be recurr'd to, upon extraordinary Occasions, and when they are evidently necessary for the Preservation of the State; But that was very far from the present Case; since the Conspiracy, in which the Bishop of *Rocheſter* was charged to have had a Share, had been discover'd and disappointed long before. He was answer'd by the Lord Bishop of *London*, to whom the Duke of *Wharton* reply'd in a long Speech, wherein his Grace, with a great deal of Skill, Judgment, and Oratory, summ'd up the whole Evidence that had been produced against the Bishop of *Rocheſter*, and endeavour'd to shew the Insufficiency of it, to prove the Charge: Concluding, ' that let the Consequences be what they ' would, he would not have such a Hellish Stain ' sully the Lustre and Glory of that illustrious ' House, as to condemn a Man without the least ' legal Evidence;' And so he was for rejecting the Bill. His Grace was strongly supported by the Lord *Bathurst*, who, in the first Place, took Notice ' of the ungracious Distinctions that were fix'd on ' the Members of that Noble and Illustrious Assembly, who differ'd in Opinion from those who ' happen'd to have the Majority; That for his ' Part, as he had nothing in View but Truth and ' Justice, the Good of his Country, the Honour of ' that House, and the Discharge of his own Conscience, he would freely speak his Thoughts, notwithstanding all Discouragements; That he ' would not complain of the sinister Arts that had ' been used of late to render some Persons obnoxious, and under Pretence of their being so, to ' open their Letters about their minutest domestick ' Affairs; For these small Grievances he could ea-  
' open



‘ fily bear ; But when he saw things go so far, as to  
 ‘ condemn a Person of the highest Dignity in the  
 ‘ Church, in such an unprecedented Manner, and  
 ‘ without any legal Evidence, he thought it his  
 ‘ Duty to oppose a Proceeding so unjust and un-  
 ‘ warrantable in it self, and so dangerous and dis-  
 ‘ mal in its Consequences.’ To this Purpose, he  
 ‘ begg’d Leave to tell their Lordships a Story he had  
 ‘ from several Officers of undoubted Credit, that  
 ‘ serv’d in *Flanders* in the late War. ‘ A *French*  
 ‘ Man, it seems, had invented a Machine, which  
 ‘ would not only kill more Men at once, than any  
 ‘ yet in use, but also disable for ever any Man that  
 ‘ should be wounded by it. Big with Hopes of a  
 ‘ great Reward, he apply’d to one of the Ministers,  
 ‘ who laid his Project before the late *French* King ;  
 ‘ but that Monarch, considering that so destructive  
 ‘ an Engine might soon be turn’d against his own  
 ‘ Men, did not think proper to encourage it, where-  
 ‘ upon the Inventer came over into *England*, and of-  
 ‘ fer’d his Service to some of our Generals, who  
 ‘ likewise rejected the Proposal with Indignation.  
 ‘ The Use and Application of this Story, added  
 ‘ his Lordship, is very obvious : For if this Way  
 ‘ of Proceeding be admitted, it will certainly prove  
 ‘ a very dangerous Engine ; No Man’s Life, Liber-  
 ‘ ty, or Property will be safe ; and if those, who  
 ‘ were in the Administration some Years ago, and  
 ‘ who had as great a Share in the Affections of the  
 ‘ People, as any that came after them, had made  
 ‘ use of such a Political Machine, some of those  
 ‘ Noble Persons, who now appear so zealous Pro-  
 ‘ moters of this Bill, would not be in a Capacity  
 ‘ to serve his Majesty at this time.’ His Lordship  
 ‘ added, ‘ That if such extraordinary Proceedings  
 ‘ went on, he saw nothing remaining for him, and  
 ‘ others, to do, but to retire to their Country  
 ‘ Houses,

' Houses, and there, if possible, quietly enjoy  
 ' their Estates, within their own Families, since  
 ' the least Correspondence, the least intercepted  
 ' Letter, might be made criminal.' To this Pur-  
 pose his Lordship quoted a Passage out of Cardinal  
*de Retz's* Memoirs, relating to that wicked Politici-  
 cian, Cardinal *Mazarin*, who boasted, ' That if  
 ' he had but two Lines of any Man's Writing, with  
 ' a few Circumstances attested by Witnesses, he  
 ' could cut off his Head when he pleased.' His  
 Lordship also shrewdly animadverted on the Ma-  
 jority of the venerable Bench, towards which tur-  
 ning himself, he said, ' He could hardly account  
 ' for the inveterate Hatred and Malice, some Per-  
 ' sons bore the learned and ingenious Bishop of  
 ' *Rocheſter*, unless it was that they were intoxicated  
 ' with the Infatuation of some of the wild *Indians*,  
 ' who fondly believe they inherit not only the  
 ' SPOILS, but even the Abilities of any great Ene-  
 ' my they kill.' The Earl of *Strafford* spoke on  
 the same side, as did also the Lord *Trevor*, who a-  
 mong other Arguments, against the Bill in Quest-  
 ion, urg'd, ' That if Men were in this unprece-  
 ' dented Manner, proceeded against without legal  
 ' Proof, in a short time Men would be try'd, as  
 ' they were liked by Ministers: That for his own  
 ' Part, he believ'd he stood but indifferently in  
 ' the Opinion and liking of some Persons, and there-  
 ' fore he had Reason to think himself the more in  
 ' Danger, because at present they wanted the Pro-  
 ' tection of the Law.' (Meaning the Suspension of  
 the *Habeas Corpus Act*) and as ' in a short time, they  
 ' were like to be so unhappy as to be deprived of  
 ' his Majesty's Personal Protection, and were still  
 ' liable to be confined upon *Suspicion*, which he took  
 ' to be no more than *Will and Pleasure*, they were  
 ' consequently at the *Will and Pleasure* of the Mi-  
 ' nisters.

nisters. That, however, no Apprehension of what  
 he might suffer, should deter him from doing what  
 he thought his Duty ; That consonant to that  
 Principle, he had all along, and still opposed  
 these extraordinary Proceedings, which tended to  
 lodge an exorbitant Power in their Fellow Sub-  
 jects. That if he were to lose his Liberty, he  
 had rather give it up to one single Tyrant,  
 than to many : For a Tyrant, if a Man of  
 common Understanding, would, for his own  
 Sake, be tender of the Lives of his Sub-  
 jects ; Whereas many Tyrants would endeavour  
 to destroy one another, to get one another's Pre-  
 ferments. The Lord *Trevor* having done speak-  
 ing, the Earl of *Finlater* and *Seafeld* took up the  
 Cudgels on the Court Side, and endeavour'd to  
 shew, that the Evidence that had been produc'd  
 before them, being sufficient to convince any rea-  
 sonable Man, that there had been a detestable Con-  
 spiracy, and that the Bishop of *Rocheſter* had a great  
 Share in it, was likewise sufficient to justify this ex-  
 traordinary Proceeding against him, especially since  
 they inflicted on him so light a Punishment, con-  
 sidering the Heinousness of his Crime. The Duke  
 of *Argyle* pursued the same Argument ; run through  
 and confuted the most essential Parts of the Bishop's  
 Defence ; and, with Vehemence, aggravated his  
 Offence, by which he had debased his Holy Func-  
 tion and Character, and acted contrary to the so-  
 lemn and repeated Oaths he had taken. The Lord  
*Gower* spoke afterwards against the Bill ; but, what  
 surpriz'd most People, my Lord *Lechmere*, who, on  
 several Occasions, had express'd his Dislike of these  
 extraordinary Proceedings, declared it as his Opini-  
 on, that there was sufficient Evidence to support  
 the Charge. He was answer'd by Earl *Comper*, in a  
 long Speech, importing in Substance, ' That the  
 ' stron-

strongest Argument which had been urg'd for this  
 Bill, was Necessity; but that for his Part, he  
 saw no Necessity that could justify so unpreceden-  
 ted and so dangerous a Proceeding. That, as had  
 already been suggested, the Conspiracy had above  
 a Twelve-Month before been happily discover'd,  
 and the Effects of it consequently prevented;  
 That besides the intrinsic Weight and Strength  
 of the Government, by the numerous Offices and  
 Employments, Civil and Military, and the Wealth  
 and Interest of the Well-affected to his Majesty's  
 Person, and the present happy Establishment,  
 the Hands of those at the Helm had still been  
 fortified by the Suspension of the *Habeas Corpus*  
 Act, and the *Additional* Troops; so that, in his  
 Opinion, there could be no Danger to the Go-  
 vernment, if *Plunket* and *Kelly* were not Prisoners  
 for Life, nor the *Bishop of Rochester* sent into Ba-  
 nishment; That, on the contrary, if that Pre-  
 late's Talent and Genius lay in contriving and car-  
 rying on State Intrigues, he thought him less  
 dangerous at Home than abroad. That the other  
 Reasons alledg'd to support this extraordinary  
 Proceeding had no more Weight in them, than  
 the first: That the known Rules of Evidence, as  
 laid down at first, and establish'd by the Law of  
 the Land, were the Birth-Right of every Subject  
 of this Nation; and ought to be constantly ob-  
 served not only in the inferiour Courts of Judi-  
 cature, but also in both Houses of Parliament,  
 till alter'd by the Legislature; That much had  
 been said of the Power of Parliaments, which he  
 own'd was very great: But that, in his Opinion,  
 their absolute Power consisted only in making and  
 repealing Laws; and till such Time as a Law  
 was repeal'd, every Subject had a Right to it.



' That the admitting the precarious and un-  
 ' certain Evidence of the Clerks of the Post-  
 ' Office, was a very dangerous Precedent. That in  
 ' former Times it was thought very grievous, that,  
 ' in capital Cases, a Man should be affected by Si-  
 ' militude of Hands; But here the Case was much  
 ' worse: since it was allow'd that the Clerks of  
 ' the Post-Office could carry the Similitude of  
 ' Hands four Months in their Minds; That these  
 ' Men might be honest, and swear to the best of  
 ' their Knowledge; but he was sure, they were, at  
 ' least, very willing and forward Evidence: For  
 ' as he ask'd one of them, how he knew such a  
 ' Paper to be Mr. Kelly's Hand? He readily an-  
 ' swer'd, *he had seen the same four Months before, and*  
 ' *he was sure it could be no other*: Whereas any Man,  
 ' who has never so little been conversant in the  
 ' World, knows that Hands may be so well coun-  
 ' terfeited, as not to be distinguish'd. After this  
 ' his Lordship commended the Bishop of Rochester's  
 ' Noble and Brave Carriage, in not answering be-  
 ' fore the House of Commons, whose Proceeding,  
 ' in this unprecedented Manner, against a Lord of  
 ' Parliament, was such an Incroachment on the  
 ' Prerogative of the Peerage, that if submitted to  
 ' by passing this Bill, they might well be said to  
 ' be the LAST OF LORDS: *Ultimus Romanorum*, My  
 ' Lords, (said his Lordship in the Conclusion) was  
 ' a Character of Honour and Praise; But to be the  
 ' last of *British* Peers, by giving up our ancient  
 ' Privileges, will never, I doubt, admit of such  
 ' Construction, and therefore I am for rejecting  
 ' this Bill? Little was said of any great Weight  
 after this Speech; and about half an Hour past  
 Nine, the Question being put, it was resolv'd in  
 the Affirmative, by a Majority of 83 Voices against

43 ; Upon which several Lords enter'd and signed the following Protestation, viz.

*Dissentient*

1. Because the Objection which we thought lay against the Bills of *Plunket* and *Kelly*, that the Commons were thereby let into an equal Share of Judicature with the Lords, does hold stronger, as we apprehend, against the present Bill, since by means of it, a Lord of Parliament is in Part tryed and adjudged to Punishment in the House of Commons, and reduced to a Necessity, either of letting his Accusation pass undefended in that House, or of appearing there, and as we take it, derogating from his own Honour, and that of the Lords in general, by answering and making his Defence in the Lower House of Parliament.

2. Because we are of Opinion, that the Commons would be very far from yielding to the Lords any Part of those Powers and Privileges, which are properly theirs by the Constitution, in any Form, or under any Pretext whatsoever. And it seems to us full as reasonable, that the Lords should be as tenacious of the Rights and Privileges which remain to them, as the Commons are on their Part.

3. We think this Bill against a Lord of Parliament, taking its Rise in the House of Commons, ought the rather not to have received any Countenance in this House, for that, as it appeared to us by the printed Votes of the House of Commons, That House had voted the Bishop guilty of all the Matters alledg'd against him in the Bill, before the Bill was brought into that House, and consequently before the Bishop had any Opportunity of being heard: And altho' there be nothing absurd in such a Vote, in order to their accusing by any Impeachment; yet it seems to us absolutely contrary to Justice, which ought to be unprejudic'd to vote any

one Guilty against whom they design to proceed in their Legislative Capacity, or in Nature of Judges, before the Party has an Opportunity to be heard, or the Bill, which is to ascertain the Accusation, is so much as brought in.

4. We are of Opinion, that no Law ought to be passed on purpose to enact, That any one be guilty in Law, and punished as such, but where such an extraordinary Proceeding is evidently necessary for the Preservation of the State: Whereas the Crime offered to be prov'd against the Bishop of *Rochester* is, as we conceive, his partaking in a traiterous Conspiracy, against the Government, which Conspiracy, by God's Blessing, is detected and, as we hope, disappointed, without the Aid of such a dangerous Proceeding as we conceive this to be.

5. Because there are certain known and established Rules of Evidence, which are Part of the Law of the Land, either introduced by Acts of Parliament, or framed by Reason and the Experience of Ages, adjusted as well for the Defence of the Life, Liberty and Property of the Innocent Subject, as the Punishment of the Guilty; and therefore these Rules are, or ought to be, constantly adhered to, in all Courts of Justice; and, as we conceive, should be also observed, till altered by Law in both Houses of Parliament, whenever they Try, Judge, and Punish the Subject, tho' in their Legislative Capacity. But since, in many Instances, in this and the two other Proceedings by Bill, we have been taught, by the Opinion of the House, that these Rules of Evidence need not be observed by the Houses acting in their Legislative Capacity, we clearly take it to be a very strong Objection to this manner of Proceeding, that Rules of Law, made for the Security of the Subject, are of no Use to him in it; and that the Conclusion from hence is very strong, That therefore it ought not to be taken up,  
but

but where clearly necessary as before affirmed : And we do desire to explain our selves so far upon the Cases of Necessity excepted, as to say we do not intend to include a Necessity arising purely from an Impossibility of convicting any other way.

6. If it be admitted, that traiterous Correspondencies in Cypher and Cant-words may, to a Degree, be discouraged by this sort of Proceeding ; in which Persons, as we think, are convicted on a more uncertain Evidence than the known Rules of Law admit of ; yet we are of Opinion, that Convenience will be much more than out-weigh'd by the Jealousy it must of Necessity, as we conceive, create in the Minds of many of his Majesty's most faithful Subjects, That their Lives, Liberties, and Properties are not safe, after such repeated Examples, as they were before ; and by the natural Consequence of this Apprehension, an Abatement of their Zeal for the Government may ensue, excepting such Persons as have had more than ordinary Opportunities of being well instructed in Principles of the utmost Duty and Loyalty.

7. We cannot be for the passing this Bill, because the Evidence produced to make good the Recital of it, or that the Lord Bishop of *Rocheſter* is guilty of the Matter he therein stands accused of, is, in our Opinions, greatly defective and insufficient, both in Law and Reason, to prove that Charge ; the Evidence consisting altogether, to the best of our Observation, in Conjectures arising from Circumstances in the intercepted Letters, or in a Comparison of Hand-writings resting on Memory only. And there being, as we think, no Proof of the Bishop's knowing of, or being privy to, any of the said Correspondence ; and as to the principal Part of the Charge against the Bishop, and on which, as we think, all the rest does depend, *viz.* the dictating of the Letters



ters of the 20th. of *April* 1722, which the House of Lords seem to have determined that *Kelly* wrote, we are of Opinion that the Bishop has, in his Defence, very clearly and fully proved, that he did not, nor possibly could, dictate those Letters, or the Substance of any Part thereof to *Kelly*, either on the Days of the Date, or at any Time during several Days before, or next after the Day of their Date, nor was in any Capacity to write them himself, tho' the Letters must have been wrote within that Compass of Time. And we are, upon the whole, of Opinion, that the Proof and Probability of the Lord Bishop of *Rocheſter's* INNOCENCE, in the Matters he stood charged with, were much stronger than those of his GUILT.

|                     |                   |                          |
|---------------------|-------------------|--------------------------|
| <i>Strafford</i>    | <i>Angleſey</i>   | <i>Maſham</i>            |
| <i>Scarſdale</i>    | <i>Aylesford</i>  | <i>Guilford</i>          |
| <i>Denbigh</i>      | <i>Aſhburnham</i> | <i>Berkeley de Str.</i>  |
| <i>Northampton</i>  | <i>Hay</i>        | <i>Pomfret</i>           |
| <i>Bruce</i>        | <i>Foley</i>      | <i>Middleton</i>         |
| <i>Salisbury</i>    | <i>Bathurſt</i>   | <i>Willoughby de Br.</i> |
| <i>Poulet</i>       | <i>Osborn</i>     | <i>Cowper</i>            |
| <i>Montjoy</i>      | <i>Trevor</i>     | <i>Brook</i>             |
| <i>Fr. Ceſtrien</i> | <i>Gower</i>      | <i>Hereford</i>          |
| <i>Dartmouth</i>    | <i>Uxbridge</i>   | <i>Bingley</i>           |
| <i>Cardigan</i>     | <i>Compton</i>    | <i>Stawell</i>           |
| <i>Litchfield</i>   | <i>Weſton</i>     | <i>Oxford</i>            |
| <i>Craven</i>       | <i>Arundel</i>    | <i>Exeter</i>            |

I Diſſent for the 6th and 7th Reaſons of the foregoing Proteſtation, and for the following Reaſons.

1. Becauſe this Extraordinary Method of proceeding by Bills of this Nature againſt Perſons who do not withdraw from Juſtice, but are willing to undergo a Legal Tryal, ought, in my Opinion, to be ſupported by clear and convincing Evidence; and

and I apprehend there has been nothing offer'd to support the Allegations set forth in the Preamble of the *Bill to inflict Pains and Penalties on Francis Lord Bishop of Rochester*, but what depends on decypher'd Letters, forc'd Constructions, and improbable Innuendo's.

2. I conceive, that the Examination of *Philip Neynoe* taken before the Lords of the Council, not sworn to, nor signed ; which appears to me to be the Foundation on which the Charge against the Bishop of *Rochester* is built, has been in my Apprehension, sufficiently proved, by the positive Oaths of three Persons, two of which have been for several Months in seperate Custodies, confirmed by other Circumstances, to have been a false and malicious Contrivance of the said *Neynoe*, to save himself from the Hands of Justice, and to work the Destruction of the Bishop of *Rochester*.

3 I do not apprehend, that the Letters of the 20th of *April*, which are suggested to be wrote by *George Kelly*, alias *Johnson*, and dictated by the Bishop, have been sufficiently proved to be the Hand-writing of the said *Kelly* ; but on the contrary it appears, to the best of my Judgment, that the Letter of the 20th of *August* stopt at the Post-Office, and from which the Clerks of the Post-Office, on their Memory only, swore they believed the said Letters of the 20th of *April* to be the same Hand-writing, (tho' they never compared two original Letters together during all that Time) has been proved by three credible Witnesses, concurring in every Circumstance of their Testimony, and well acquainted with the Hand-writing of the said *Kelly*, not to be his Hand-writing ; and I conceive that the Difference they have observed in the Hand of the said *Kelly*, upon which they ground their Opinions, is sufficiently supported by comparing the said

said Letter of the 20th of *August*, with the Letters wrote by the said *Kelly* to the Lord TOWNSHEND and Mr. *De la Faye*, during the Time of his Confinement.

4. I do not apprehend, that any Proof has been offered to support what has been so much insisted on, and justly esteemed essential to the Charge, that the Bishop of *Rocheſter* dictated the Letters of the 20th of *April*; but it has appeared, I conceive, that there has been no Intimacy between the Bishop and the said *Kelly*, and the Testimony of the Bishop's Servants concurring with the Evidence given on that Head, by the Persons that *Kelly* lived in the strictest Correspondence with, leaves, to the best of my Judgment, no Room to doubt, but that the Acquaintance between them was slender and publick; and to suggest from thence, that the Bishop dictated the Letters of the 20th of *April*, when it appear'd, that for many Days before he could not possibly see the said *Kelly*, is, in my Opinion, repugnant to Reason, and contrary to Justice.

WHARTON.

The Substance of the *Bill to punish* the Bishop of *Rocheſter*, is as follows.

**W**Hereas in the Year 1721, and 1722, a Detestable and Horrid Conspiracy was formed and carried on by divers Traitors, for invading Your Majesty's Kingdoms with Foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the Tower and City of *London*, and for laying violent Hands upon Your Majesty's most Sacred Person, and upon His Royal Highness the Prince of *Wales*, in order to subvert our present Happy Establishment in Church and State, by placing a Popish Pretender on Your Throne: And  
whereas

whereas for the better concealing and effecting the said Conspiracy, divers Treasonable Correspondencies were, within the Time aforesaid, carried on by Letters written in Cyphers, Cant Words, and Fictitious Names; which Conspiracy, had it not been disappointed by the Goodness of Almighty God, would have deprived Your Majesty's Kingdoms of the Enjoyment of their Religion, Laws, and Liberties, involved them in Blood and Ruin, and subjected Your People to the Bondage and Oppression of *Romish* Superstition and Arbitrary Power: For which Execrable Treason *Christopher Layer* hath been Indicted, Tryed, Convicted, and Attainted. And whereas *Francis* Lord Bishop of *Rocheſter*, notwithstanding the many solemn Assurances, by him given of his Faith and Allegiance to Your Majesty, by taking the Oaths by Law appointed to be taken, instead of the Oaths of Allegiance and Supremacy; which Oaths he had likewise taken at sundry Times, during the Respective Reigns of Their late Majestys, King *William* and Queen *Mary*, and of her late Majesty Queen *Anne*; and notwithstanding he had frequently abjured the Pretender, hath, in direct Violation of his said repeated Oaths and Obligations, and to the great Scandal of Religion, and his holy Function, been deeply concerned in forming, directing, and carrying on the said Wicked and Detestable Conspiracy, and hath been a principal Actor therein, by Traiterously Consulting and Corresponding with divers Persons, to raise an Insurrection and Rebellion against Your Majesty, within this Kingdom, and to procure a Foreign Force to invade the same, in order to Depose Your Majesty, and place the Pretender on Your Throne; and by Traiterously Corresponding with the said Pretender, and Persons employ'd by him, knowing them to be so employed: Therefore to manifest our just Ab-

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horrence



horrence of so wicked and abominable a Conspiracy, and our Zeal and tender Regard for the Preservation of Your Majesty's Person and Government, and of the Protestant Succession in Your Majesty's Royal Family, the solid Foundations of our present Happiness and future Hopes ; and to the End that no Conspirators may, by any subtil Contrivance or Practice whatsoever, escape Punishment, and that all others may, by the Justice of Parliament, be for ever hereafter deterred from engaging in any Traiterous Conspiracies or Attempts : We Your Majesty's most Dutiful and Loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech Your Majesty, that it may be Enacted ; And be it Enacted, &c. That the said *Francis* Lord Bishop of *Rocheſter*, from and after the First Day of *June*, in the Year of our Lord 1723 shall be, and is hereby, deprived of all and ſingular his Offices, Dignities, Promotions, and Benefices Eccleſiaſtical whatsoever, and that the ſame, and every of them, ſhall from thenceforth be actually void, as if he were naturally Dead ; and that the ſaid *Francis*, Lord Bishop of *Rocheſter*, ſhall from thenceforth for ever be diſabled, and render'd incapable of, and from taking, holding, or enjoying any Office, Dignity, Promotion, Benefice, or Employment within this Realm, or any other His Majesty's Dominions, and alſo of and from uſing or exerciſing any Office, Function, Authority, or Power, Eccleſiaſtical or Spiritual whatsoever, and ſhall and do ſuffer perpetual Exile, and be for ever Banished this Realm, and ſhall other His Majesty's Dominions, and ſhall depart out of the ſame on or before the Five and twentieth Day of *June*, in the Year 1723. And that if the ſaid *Francis*, Lord Bishop of *Rocheſter*, ſhall return into, or be found within this Realm, or any other His Majesty's

sty's Dominions at any time, after the said Five and twentieth Day of *June*, 1723. he the said *Francis*, Lord Bishop of *Rochester*, being thereof lawfully convicted, shall be adjudged guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without Benefit of Clergy, and shall be utterly incapable of any Pardon from His Majesty, his Heirs or Successors.

And be it further Enacted, That all Persons, who shall, from, and after, the said Five and twentieth Day of *June*, 1723. be aiding or assisting to the Return of the said *Francis* Lord Bishop of *Rochester* into this Realm, or any other His Majesty's Dominions, or shall harbour or conceal him, within the same, or any of them, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without Benefit of Clergy.

And be it further Enacted, That if any of the Subjects of His Majesty, his Heirs or Successors, except such Persons as shall be licensed for that Purpose by his Majesty, his Heirs or Successors, under his or their Sign Manual, shall from and after the said 25th of *June*, 1723, within this Realm or without, hold, entertain, or keep any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said *Francis* Lord Bishop of *Rochester*, or with any Person or Persons employed by him, knowing such Person or Persons to be so employed, such Person so Offending, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without Benefit of Clergy.

And be it further Enacted, That if any Offence against this Act shall be committed out of this Realm, the same shall, or may be alledged, laid, enquired of, and tried in any County within *Great Britain*.

On

*The late Bp.  
of Rochester  
goes beyond  
Sea.*

On *Tuesday* the 18th of *June*, the deprived Lord Bishop of *Rochester*, accompanied by his Son in Law Mr. *Morrice* and his Spouse, embark'd on board the *Aldborough*, one of his Majesty's Ships of War, and on *Friday* the 21st, landed at *Calais*; where being inform'd that the Lord Viscount BOLINGBROKE was just arrived to embark for *England*, that Prelate wittily said, Then I AM EX-CHANG'D.

*His Witty  
saying.*

F I N I S.